

6254

Before the
UNITED STATES COPYRIGHT ROYALTY BOARD
Library of Congress
Washington, D.C.

-----:
In Re: : Docket No.
: 15-CRB-0001-WR
Determination of Royalty : (2016-2020)
Rates and Terms for : Volume 23-PUBLIC
Ephemeral Recording and : Pages 6254-6274
Digital Performance of : Pages 6295-6401
Sound Recordings (Web IV) : Pages 6486-6503
-----:

PUBLIC SESSION

Washington, D.C.

Thursday, May 28, 2015

The hearing in the above-entitled matter
was convened at 9:09 a.m.

BEFORE COPYRIGHT ROYALTY JUDGES:

SUZANNE M. BARNETT, CHIEF JUDGE

DAVID R. STRICKLER, JUDGE

JESSE FEDER, JUDGE

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6255	6257
1 APPEARANCES	1 CONTENTS
2 On behalf of SoundExchange:	2 EXAMINATION OF DIR CROSS RED REC
3 MUNGER TOLLES & OLSON, LLP	3 FREDERICK KASS
4 GLENN POMERANTZ, ESQUIRE	3 BY MR. MALONE 6260
5 355 South Grand Avenue, 3rd Floor	4 BY MR. CHOUDHURY 6270
6 Los Angeles, California 90071	5
7 213-683-9107	6 EXAMINATION OF
8 On behalf of Pandora Media, Inc.	7 DANIEL L. RUBINFELD
9 WEIL GOTSHAL & MANGES, LLP	7 BY MR. POMERANTZ 6273 6494
10 BRUCE RICH, ESQUIRE	8 BY MR. RICH 6312
11 767 Fifth Avenue	9 BY MS. HALL 6376
12 New York, New York 10153	10 BY MR. JOSEPH 6486
13 212-310-8000	11 EXAMINATION OF
14 -and-	12 GLEN BARROS
15 JACOB EBIN, ESQUIRE	13 BY MS. LEMOINE 6497
16 AKIN GUMP STRAUSS HAUSER & FELD, LLP	14 BY MS. POPE 6512
17 One Bryant Park	15 BY MR. RICH 6535
18 Bank of America Tower	16 EXHIBITS ADMITTED IN EVIDENCE
19 New York, New York 10036	17 SoundExchange
20 212-872-1000	18 Exhibit 001 Written Rebuttal Testimony 6499
21 On behalf of National Association of Broadcasters:	19 of Glen Barros
22 BRUCE JOSEPH, LLP	20 Exhibit 110 Concord Agreement with IHM 6502
23 WILEY REIN, LLP	21 (IHM 3365)
24 1776 K Street, N.W.	22 (Provisionally)
25 Washington, D.C. 20006	23 Exhibit 111 Draft License 6505
26 202-719-7453	24 Counterproposal
27 On behalf of Intercollegiate Broadcasting and	25 Exhibit 112 Notice of Pandora-Merlin 6510
28 Harvard Radio:	26 (Provisionally) Deal Terms
29 WILLIAM MALONE, ESQUIRE	27 Exhibit 385 E-Mail 6520
30 40 Cobble's Green	28 Exhibit 386 Counterproposal 6520
31 205 Main Street	29 Exhibit 387 E-Mail 6522
32 New Canaan, Connecticut 06840	30 Exhibit 388 Native Redline 6522
33 203-966-4770	31 IBS
34 On behalf of iHeartMedia, Inc.	32 Exhibit 9000 Written Direct Testimony 6270
35 KELLOGG, HUBER, HANSEN, TODD,	33 of Frederick L. Kass, Jr.
36 EVANS & FIGEL, PLLC	
37 MARK HANSEN, ESQUIRE	
38 1615 M Street, N.W.	
39 Suite 400	
40 Washington, D.C. 20036	
41 202-326-7992	
42	
6256	6258
1 APPEARANCES (Continued):	1 PROCEEDINGS
2 On behalf of SiriusXM Radio:	2
3 ARENT FOX, LLP	3 (PUBLIC SESSION)
4 MARTIN CUNNIFF, ESQUIRE	4
5 1717 K Street, N.W.	5 CHIEF JUDGE BARNETT: Good morning.
6 Washington, D.C. 20006	6 Please be seated.
7 202-857-6000	7 Counsel for SoundExchange and everyone,
8	8 we have admitted some paper documents subject to
9 On behalf of Educational Media Foundation:	9 identification on the disks in native format, the
10 DAVID D. OXENFORD, ESQUIRE	10 whole of the transaction in documents. I think
11 WILKINSON BARKER KNAUER, LLP	11 those are 86 and 87, those disks?
12 2300 N Street, N.W.	12 MS. WHITTLE: 80 and 87.
13 Suite 700	13 CHIEF JUDGE BARNETT: 80 and 87. My
14 Washington, D.C. 20037	14 impression, and you can correct me if it's the
15 202-783-4141	15 wrong impression, my impression is that those disks
16	16 contain a lot of material, not all of which will be
17 ALSO PRESENT:	17 part of an admitted exhibit; is that correct?
18 For SoundExchange:	18 MR. POMERANTZ: Ms. Ehler is not here,
19 Martha Larraondo-Klipper, Anjan Choudhury, Colin	19 so I'll do my best. I believe everything in there
20 Rushing, Jonathan Blavin, Jennifer Bryant, Melinda	20 is to be admitted. It is -- these are various
21 LeMoine, Rose Ehler	21 documents that are related to the agreements that
22 For Pandora:	22 are -- that have been discussed, and I believe
23 Benjamin Marks, Gary Greenstein	23 they've been reviewed by all of the parties here,
24	24 and a narrower subset was included on the disks
25 For iHeartMedia:	25 that had been submitted. I can confirm that with
26 John Thome, Caitlin Hall, Leslie Pope, Thomas B.	26 Ms. Ehler when I speak to her, but I believe
27 Bennett	
28 For NAB:	
29 Michael Sturm, Suzanne Head	
30	
31 Bonnie L. Russo, Capital Reporting Company	

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6259	<p>1 everything on those disks was supposed to be 2 submitted. 3 CHIEF JUDGE BARNETT: Okay. So you 4 have submitted replacement disks at this point that 5 are edited? 6 MR. POMERANTZ: Correct. 7 CHIEF JUDGE BARNETT: That's all we 8 needed to know. 9 MR. POMERANTZ: Correct. 10 CHIEF JUDGE BARNETT: We didn't have to 11 want to weigh through a bunch of bits and bites and 12 not know what they were. 13 MR. POMERANTZ: I think earlier this 14 week, we handed some disks to Ms. Whittle, and it 15 is those disk that are the replacement disks. 16 CHIEF JUDGE BARNETT: Right. Thank 17 you. 18 Mr. Malone. 19 MR. MALONE: Good morning. 20 CHIEF JUDGE BARNETT: Good morning. 21 MR. MALONE: I call Captain Kass. 22 CHIEF JUDGE BARNETT: All right. 23 MR. MALONE: The witness book, Your 24 Honor, is the one that I distributed with Mr. 25 Papish when he was here and I think there are</p>	6261	<p>1 Q. All right. 2 CHIEF JUDGE BARNETT: I'm sorry, Mr. 3 Kass, just for the record, can you spell your last 4 name, please. 5 THE WITNESS: Yes. Kilo Alpha Sierra 6 Sierra. 7 CHIEF JUDGE BARNETT: Thank you. 8 BY MR. MALONE: 9 Q. I have just handed you a statement 10 which is marked by the Court as IBS Exhibit 9000. 11 Would you look at that and identify it, please. 12 A. Yes. It's my testimony -- my written 13 testimony on behalf of the Intercollegiate 14 Broadcasting System. 15 Q. On the last page, is that your 16 signature? 17 A. Yes. 18 Q. And is the -- the statements of fact in 19 the written testimony currently true and correct? 20 A. Yes. 21 Q. What is your relationship to the 22 Intercollegiate Broadcasting System? 23 A. I'm the current chief executive 24 officer, volunteer chief executive officer and 25 treasurer.</p>
6260	<p>1 enough copies that we can provide duplicates. 2 CHIEF JUDGE BARNETT: Okay. Good. 3 Thank you. I have already taken mine into the 4 other space. 5 MR. MALONE: Val, the bench needs 6 copies. 7 CHIEF JUDGE BARNETT: That's okay. I 8 just offloaded a bunch of things. 9 I'm sorry, sir, could you please stand 10 and raise your right hand. 11 FREDERICK J. KASS, JR., 12 being first duly sworn, to tell the truth, the 13 whole truth and nothing but the truth, testified as 14 follows: 15 DIRECT EXAMINATION BY COUNSEL FOR 16 INTERCOLLEGIATE 17 BROADCASTING SYSTEM AND HARVARD 18 RADIO 19 BY MR. MALONE: 20 Q. Will you state your name for the 21 record, please. 22 A. Frederick J. Kass, Jr. 23 Q. And where is your residence? 24 A. New Windsor, New York. 25 Q. Which is just south of Newburgh? A. Just north of U.S. Military Academy at</p>	6262	<p>1 Q. And does the Intercollegiate 2 Broadcasting System have any employees? 3 A. No one is paid. We are all volunteers. 4 Q. And what was your first association 5 with college radio? 6 A. When I was 17, a freshman at Lehigh 7 University, 1960, I was manager of the radio 8 station, became interested in IBS, and have 9 basically been with them ever since. 10 Q. And would you briefly canvas your 11 military career? 12 A. I retired navy captain, 30 years of 13 service, multiple combat tours in Vietnam and 14 Desert Storm. I guess that's -- 15 Q. All right. 16 A. I served from -- I was commissioned in 17 1964 and I retired in 1996. 18 Q. And do you have a relationship with a 19 military entity of the New York State? 20 A. I do. Governor Mario Cuomo, when I 21 retired from active federal duty appointed me as 22 the commander of the New York State Naval Militia, 23 which is the state duty, the Navy, Marine Corps and 24 Coast Guard. 25 Q. What is the composition of the</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6263	<p>1 Intercollegiate Broadcast System?</p> <p>2 A. Approximately 800 high school,</p> <p>3 community college, state college and universities,</p> <p>4 the vast majority of which are public entities of</p> <p>5 our 50 states.</p> <p>6 Q. And are these all homogenous or are</p> <p>7 there various types of student station members?</p> <p>8 A. They are dramatically different from</p> <p>9 the smallest, which would be the high school</p> <p>10 stations and the community college stations. They</p> <p>11 have no dormitories. They are not a residential</p> <p>12 activity, so they have very limited broadcasting</p> <p>13 activities to the state colleges and then the major</p> <p>14 universities which might have 40 or 50,000</p> <p>15 students. Essentially all of the students, because</p> <p>16 these are student radio stations, literally exist</p> <p>17 for the progress of science and musical arts. They</p> <p>18 are trying to build skill sets up, and they use the</p> <p>19 radio station as -- much like a science lab, a</p> <p>20 physics lab or a chem lab. It is a communications</p> <p>21 room.</p> <p>22 Q. To what extent are the students paid?</p> <p>23 A. They are all volunteer.</p> <p>24 CHIEF JUDGE BARNETT: Excuse me. Mr.</p> <p>25 Kass, you indicated that a vast majority of the</p>	6265	<p>1 respect to IBS?</p> <p>2 A. Absolutely. IBS is basically 75 years</p> <p>3 of best management practices and what have you.</p> <p>4 The way we communicate those practices to our</p> <p>5 members are coast to coast conferences in the fall,</p> <p>6 which are held at IBS member colleges and</p> <p>7 universities. We have a major conference in New</p> <p>8 York City in March. In addition to that, the best</p> <p>9 way to learn is to have fun and be incentivized, so</p> <p>10 we have an extensive rewards program and that --</p> <p>11 there is over 4,000 entries into that and the</p> <p>12 students are very anxious to win those awards.</p> <p>13 Q. By entire, you mean programs?</p> <p>14 A. Yes. Best sports program at the</p> <p>15 University of Connecticut for women's basketball.</p> <p>16 Q. And a volunteer member of the staff</p> <p>17 listens to all 4,000 of these?</p> <p>18 A. We have about 200 volunteers and the</p> <p>19 judges tend to be radio professionals that also</p> <p>20 speak at our conference. We have roughly 200</p> <p>21 government and radio professionals and on occasion,</p> <p>22 SoundExchange people.</p> <p>23 Q. Going back to the classifications, if</p> <p>24 you will, or types of stations, to what extent do</p> <p>25 they differ in terms of the number of hours of</p>
6264	<p>1 members are public entities. Do you have a</p> <p>2 breakdown of percentage or numbers on how many are</p> <p>3 public and how many are private?</p> <p>4 THE WITNESS: It is roughly 80 percent</p> <p>5 public and 15 percent private, to the extent that</p> <p>6 Harvard University is -- or Harvard College is</p> <p>7 private, and then about five percent are</p> <p>8 community-based, that necessarily -- they are not</p> <p>9 necessarily financed by an entity of the state.</p> <p>10 They are financed by the community.</p> <p>11 CHIEF JUDGE BARNETT: Thank you.</p> <p>12 THE WITNESS: You're welcome.</p> <p>13 BY MR. MALONE:</p> <p>14 Q. And are some of these stations</p> <p>15 extracurricular activities?</p> <p>16 A. Yes, most of them are.</p> <p>17 Q. And is there a problem with the</p> <p>18 stations paying money to SoundExchange, those that</p> <p>19 are state institutions?</p> <p>20 A. Yes, many of the 50 states have a rule</p> <p>21 that the state taxpayer money cannot be paid for</p> <p>22 lobbying or a lobbying group and SoundExchange uses</p> <p>23 some of their money for lobbying.</p> <p>24 Q. Would you elaborate, please, on the</p> <p>25 activities that member stations participate in with</p>	6266	<p>1 operation per channel?</p> <p>2 A. The smaller stations, that would be the</p> <p>3 high school stations and the community college</p> <p>4 stations are on the air, so to speak, roughly three</p> <p>5 hours a day, five days a week, 15 hours a week, and</p> <p>6 they have about a 39-week year with vacations and</p> <p>7 spring break, et cetera, so they are putting it in</p> <p>8 terms of ATH or average tuning hours, they are on</p> <p>9 the air about 1,755 hours a year.</p> <p>10 MR. CHOUDHURY: Your Honor, this is</p> <p>11 beyond the scope. There are no numbers of ATH or</p> <p>12 estimates in his testimony.</p> <p>13 MR. MALONE: Well, if Your Honor</p> <p>14 please, he is describing the membership composition</p> <p>15 of IBS and as he has laid the foundation by saying</p> <p>16 there are different types, his testimony in total</p> <p>17 will describe, for the bench, the types of stations</p> <p>18 that are members of IBS. This is how the 800</p> <p>19 members of his testimony refers to breakdown.</p> <p>20 CHIEF JUDGE BARNETT: Sustained.</p> <p>21 JUDGE FEDER: Mr. Malone, can you pull</p> <p>22 the microphone a little closer to you.</p> <p>23 MR. MALONE: I'm sorry.</p> <p>24 BY MR. MALONE:</p> <p>25 Q. I am going to hand you a document</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6267	<p>1 marked IBS Exhibit No. 9001, which in the witness</p> <p>2 binder is Tab 4, and would you identify that,</p> <p>3 please.</p> <p>4 A. Yes, this is IBS comments on</p> <p>5 SoundExchange and CPI joint rate proposal.</p> <p>6 Q. And again, going to the last page, is</p> <p>7 that your signature?</p> <p>8 A. Yes, it is.</p> <p>9 MR. CHOUDHURY: Your Honor, we object</p> <p>10 to questions and the admission of this exhibit. We</p> <p>11 understand these comments are part of the overall</p> <p>12 record in the proceeding, but there is nothing in</p> <p>13 the testimony about this document.</p> <p>14 MR. MALONE: If Your Honor please, the</p> <p>15 sequence of events here is that CBI joined in a</p> <p>16 motion to adopt certain regulations that they</p> <p>17 agreed upon with SoundExchange. That was filed,</p> <p>18 and we opposed that, and in the comments we filed,</p> <p>19 you will note that the -- on information and</p> <p>20 belief, we indicated that the -- there were some</p> <p>21 problems with the bona fides of the agreement</p> <p>22 because of some side payments.</p> <p>23 SoundExchange -- I'm sorry, CBI filed</p> <p>24 written testimony. We filed interrogatories and</p> <p>25 document production requests which were denied, and</p>	6269	<p>1 testimony, we don't think there is anything that</p> <p>2 addresses that here.</p> <p>3 CHIEF JUDGE BARNETT: Mr. Malone, the</p> <p>4 proposed settlement between SoundExchange and CBI</p> <p>5 was published, as you are well aware. We did</p> <p>6 receive comments on that. Those comments are part</p> <p>7 of the overall record. They relate solely to the</p> <p>8 CBI settlement and our -- while that is not</p> <p>9 unrelated to what we are doing here, our</p> <p>10 consideration of those comments will be done in the</p> <p>11 context of that settlement.</p> <p>12 MR. MALONE: Well, if Your Honor</p> <p>13 please, that's -- however the bench wants to deal</p> <p>14 with that is fine. I do think that there are</p> <p>15 serious allegations which are unrebutted on paper</p> <p>16 or in live testimony, and we will stand on the</p> <p>17 record as you have it.</p> <p>18 CHIEF JUDGE BARNETT: Okay. Thank you.</p> <p>19 MR. MALONE: I think that concludes my</p> <p>20 questions, Mr. Kass.</p> <p>21 JUDGE FEDER: Mr. Malone, did you</p> <p>22 intend to offer the written testimony?</p> <p>23 MR. MALONE: I'm sorry, Your Honor, I</p> <p>24 neglected to do that. Thank you.</p> <p>25 We offer Exhibit 9000.</p>
6268	<p>1 so SoundExchange -- or I'm sorry, CBI did not offer</p> <p>2 a witness in this proceeding so that is certainly</p> <p>3 not supported by testimony, and I think our</p> <p>4 position would be that the proposal is -- you know,</p> <p>5 what's sauce for the goose is sauce for the gander.</p> <p>6 And if our opposition is going to be</p> <p>7 not admitted, then we don't think that there is any</p> <p>8 evidence in the record that supports the agreement</p> <p>9 between SoundExchange and CBI, and so I think the</p> <p>10 consequences of excluding our opposition would also</p> <p>11 have the effect of excluding any affirmative</p> <p>12 showing by CBI, and without that, I don't think</p> <p>13 there is any record support for the CBI proposal.</p> <p>14 CHIEF JUDGE BARNETT: Mr. Choudhury?</p> <p>15 MR. MALONE: Briefly, we don't think</p> <p>16 this situation is any different than the situation</p> <p>17 with Mr. Papish, and in fact, in this situation,</p> <p>18 there was certainly opportunity to file rebuttal</p> <p>19 testimony in this proceeding and that was not filed</p> <p>20 by IBS in this proceeding, and of course, this</p> <p>21 document is part of the record with all of the</p> <p>22 comments that were filed about the settlement which</p> <p>23 were not just from IBS but with respect to the fact</p> <p>24 record and the testimony of this witness which</p> <p>25 should be restricted to his written direct</p>	6270	<p>1 CHIEF JUDGE BARNETT: Is Exhibit 9004</p> <p>2 his testimony?</p> <p>3 MS. WHITTLE: 9000 is the written</p> <p>4 testimony of Mr. Kass.</p> <p>5 CHIEF JUDGE BARNETT: 9000, oh, I</p> <p>6 thought it was 9004.</p> <p>7 MR. MALONE: No, we are not that</p> <p>8 prolific.</p> <p>9 CHIEF JUDGE BARNETT: Any objection to</p> <p>10 Exhibit 9000?</p> <p>11 MR. CHOUDHURY: No objection.</p> <p>12 CHIEF JUDGE BARNETT: Exhibit 9000 is</p> <p>13 admitted. Thank you, Mr. Malone.</p> <p>14 (IBS Exhibit No. 9000 was admitted into</p> <p>15 evidence.)</p> <p>16 CHIEF JUDGE BARNETT: Mr. Kass, you</p> <p>17 might have some more questions to answer, so we're</p> <p>18 not going to let you off the hook that easy.</p> <p>19 CROSS-EXAMINATION BY COUNSEL FOR</p> <p>20 SOUNDEXCHANGE</p> <p>21 BY MR. CHOUDHURY:</p> <p>22 Q. I will let you off the hook pretty</p> <p>23 easy. Thank you for your patience in waiting with</p> <p>24 us for your testimony.</p> <p>25 As you know, my name is Anjan Choudhury</p> <p>and I represent SoundExchange. Just a couple of</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6271	<p>1 questions.</p> <p>2 There are members of IBS who don't</p> <p>3 Webcast, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And do you know what percentage of your</p> <p>6 total membership engaging in Webcasting?</p> <p>7 A. No.</p> <p>8 Q. Do you know how many -- well, let me</p> <p>9 ask you: You know, in your testimony, you referred</p> <p>10 to the state laws.</p> <p>11 Do you recall what --</p> <p>12 A. Yes.</p> <p>13 Q. Can you identify an example of one of</p> <p>14 those state laws?</p> <p>15 A. By chapter and verse? I mean, New York</p> <p>16 State, for instance, which I am a citizen of, has a</p> <p>17 statute -- actually numerous statutes which say</p> <p>18 that New York State taxpayer money may not be used</p> <p>19 for -- to pay a lobbyist or lobbying organizations.</p> <p>20 Q. And what you mean by that, is that</p> <p>21 those laws mean that you can't donate, for example,</p> <p>22 to a lobbying organization, correct?</p> <p>23 A. No. It means that you can't use state</p> <p>24 taxpayer money to pay an organization that lobbies.</p> <p>25 Q. Would you agree that state taxpayer</p>
6273	<p>1 having been previously duly sworn, to tell the</p> <p>2 truth, the whole truth and nothing but the truth,</p> <p>3 testified as follows:</p> <p>4 MR. POMERANTZ: Just so everybody has</p> <p>5 what they should have, there should be two binders,</p> <p>6 the first of which I believe is just his direct and</p> <p>7 rebuttal testimony with exhibits, and the second is</p> <p>8 some other documents we may refer to during the</p> <p>9 course of the examination. I believe inside the</p> <p>10 pocket part of the -- maybe the first binder will</p> <p>11 be some demonstrative slides that we will be going</p> <p>12 through.</p> <p>13 DIRECT EXAMINATION BY COUNSEL FOR</p> <p>14 SOUNDEXCHANGE</p> <p>15 BY MR. POMERANTZ:</p> <p>16 Q. Good morning, Professor Rubinfeld.</p> <p>17 A. Good morning.</p> <p>18 Q. I remind you that you are still under</p> <p>19 oath.</p> <p>20 A. I am.</p> <p>21 Q. So we are here today to discuss your</p> <p>22 written rebuttal testimony and, in particular,</p> <p>23 we're going to address just a few of the topics</p> <p>24 that you raised there.</p> <p>25 Let's look at the first slide. If you</p> <p>could tell the judges what topics we will be</p>
6272	<p>1 organizations, like IBS members, they pay</p> <p>2 electricity bills, correct?</p> <p>3 A. Typically, no. They are provided free</p> <p>4 by the university.</p> <p>5 Q. So it's your testimony that under your</p> <p>6 understanding of the laws, that state organizations</p> <p>7 cannot pay any bills for any organization that has</p> <p>8 a lobbying component to it?</p> <p>9 A. Correct.</p> <p>10 Q. And you are not a lawyer, correct?</p> <p>11 A. Absolutely not.</p> <p>12 MR. CHOUDHURY: Thank you. That is</p> <p>13 all.</p> <p>14 CHIEF JUDGE BARNETT: Any further</p> <p>15 questions from anyone?</p> <p>16 Thank you very much, Mr. Kass.</p> <p>17 THE WITNESS: Thank you, Your Honor.</p> <p>18 (Witness excused.)</p> <p>19 MR. POMERANTZ: Your Honor,</p> <p>20 SoundExchange calls Professor Daniel Rubinfeld as</p> <p>21 our next witness.</p> <p>22 CHIEF JUDGE BARNETT: Professor</p> <p>23 Rubinfeld, you remain under oath, so you may be</p> <p>24 seated.</p> <p>25 DANIEL L. RUBINFELD,</p>
6274	<p>1 addressing this morning.</p> <p>2 A. Sure. I will be commenting on some</p> <p>3 aspects of the iHeart-Warner deal as a possible</p> <p>4 benchmark, and then I'll also talk about the</p> <p>5 Pandora-Merlin deal, and then I want to make a few</p> <p>6 responses to some of the critiques of the</p> <p>7 interactivity adjustment that I used to go from the</p> <p>8 interactive services to get a benchmark with</p> <p>9 respect to noninteractives.</p> <p>10 Q. Right.</p> <p>11 MR. POMERANTZ: So, Your Honor, the</p> <p>12 first topic, the iHeart-Warner topic, will be</p> <p>13 confidential. One small portion of the</p> <p>14 Pandora-Merlin will also be confidential. The rest</p> <p>15 will be open.</p> <p>16 So I think if we can start with it</p> <p>17 closed and then we'll bring everybody back.</p> <p>18 CHIEF JUDGE BARNETT: Thank you.</p> <p>19 Anyone in the courtroom who has not signed the</p> <p>20 nondisclosure certificate, please wait outside.</p> <p>21 (THIS ENDS PUBLIC SESSION)</p> <p>22 (RESTRICTED SESSION BOUND</p> <p>23 SEPARATELY)</p> <p>24</p> <p>25</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6275	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	1 the rate period. Everything fits very closely to 2 the Pureplay settlement itself. 3 Q. And then if we could go to the next 4 slide, Slide 14. 5 Could you explain to the judges your 6 views as to whether the Pandora-Merlin deal is 7 representative as -- for purposes of benchmark 8 considerations? 9 A. Sure. As I think I expressed in my 10 original testimony, I would be very concerned 11 myself without relying on a single agreement in 12 order to reach a decision about what the 13 appropriate rate setting ought to be, and that is 14 particularly true because the agreement was one 15 that was affected by the shadow. 16 This particular agreement with Merlin 17 involves -- does not involve any of the three 18 majors and Merlin is a significant player, but they 19 have less than five percent of all the performances 20 on Pandora. So you have to be careful about what 21 inferences you draw from that size sample, if you 22 will. And so there is no agreement. If there were 23 other agreements that Pandora had with the majors, 24 that would add more information. It would still 25 suffer from the shadow problem, but at least	6296	
6295	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	1 (THIS BEGINS PUBLIC SESSION) 2 BY MR. POMERANTZ: 3 Q. Now, Professor Rubinfeld, if we could 4 turn back to Slide 12. 5 Is this a summary of the points you 6 want to address today relating to Pandora-Merlin? 7 A. Yes. 8 Q. Let's go to the first point, which I 9 think is described on tab -- on Slide 13. 10 Could you just walk the judges through 11 your views about the effects of the shadow of the 12 statutory license on the Pandora-Merlin deal? 13 A. Yes. My view is that this deal, like 14 the iHeart deal is -- was affected by the shadow of 15 the statutory license. There is just no way to 16 avoid that. 17 In this particular case, you see the 18 effect of the shadow because the headline rate on 19 the deal was essentially a mirror of the Pureplay 20 rates, and so everyone knew when the deal was being 21 negotiated that Pandora had the option to take -- 22 to accept the Pureplay rates and enter into this 23 deal, but it is very hard for me to see why the 24 shadow wouldn't have a big effect on the 25 negotiations, and the deal ends on the last day of	1 provide more information so I would just be very 2 nervous about drawing any simple conclusion just 3 from the Merlin agreement. 4 JUDGE STRICKLER: Question for you, 5 Professor Rubinfeld: I just want to get a sense of 6 how many contracts you looked at, separate and 7 apart from market share, which is a different 8 issue, versus the number of contracts that were 9 looked at by the services, how many contract pairs 10 did you look at to reach your estimate of -- for 11 proposed rates? 12 THE WITNESS: Well, I looked at over 80 13 -- on the interactive side, over 80 contracts, 60 14 of which had data on play rates that I used in the 15 calculations, so the actual calculations had about 16 60 contracts. 17 JUDGE STRICKLER: So 60, and 18 iHeart-Warner, if we're just keeping score -- and 19 again, in this regard and no other way, just so I 20 get a sense of this aspect of it, they relied on -- 21 they have 28 agreements that they had proposed. I 22 understand you may have criticisms of a number of 23 them, but I believe they have 28; is that right? 24 THE WITNESS: There are a lot of -- 25 yeah, I think there are 27 agreements with indies,	6297

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6298	6300
<p>1 that's correct.</p> <p>2 JUDGE STRICKLER: Plus the</p> <p>3 iHeart-Warner makes 28.</p> <p>4 THE WITNESS: Right.</p> <p>5 JUDGE STRICKLER: And then we have the</p> <p>6 Pandora-Merlin agreement. Would you consider the</p> <p>7 Pandora-Merlin agreement one separate agreement or</p> <p>8 does it constitute -- each time one of the Merlin</p> <p>9 entities opts in, it constitutes a separate</p> <p>10 agreement between -- from an economic point of</p> <p>11 view, between that entity that opted in and</p> <p>12 Pandora?</p> <p>13 THE WITNESS: I think of it as just one</p> <p>14 agreement because everyone who opts in is opting in</p> <p>15 to exactly the same terms, so I think it is -- for</p> <p>16 me, it is more proper to say one agreement that</p> <p>17 affects let's say up to five percent of the market.</p> <p>18 JUDGE STRICKLER: But I understand the</p> <p>19 market is a different issue.</p> <p>20 THE WITNESS: Right.</p> <p>21 JUDGE STRICKLER: I am purposely</p> <p>22 holding that aside and asking the question.</p> <p>23 So you looked at about 60 agreements</p> <p>24 and the services in that regard looked at</p> <p>25 approximately 29 agreements; is that right?</p>	<p>1 variations aside for a moment -- I don't mean to</p> <p>2 minimize the importance of it, but just leave it</p> <p>3 aside and leave the market share aside that's</p> <p>4 represented by these agreements -- again, not</p> <p>5 intending to minimize the importance of that, what</p> <p>6 import, if any, do you put on the fact that you</p> <p>7 looked at 60 agreements versus the fact that the</p> <p>8 services looked at 29 agreements?</p> <p>9 THE WITNESS: It's not -- I do think</p> <p>10 the 60 are substantially more informative than 29,</p> <p>11 but it's not just by counting contracts.</p> <p>12 JUDGE STRICKLER: That's my point.</p> <p>13 That's why I was holding the other things aside.</p> <p>14 So I hold them constant, if you will. Just -- so</p> <p>15 if I understand correctly, it's not the mere fact</p> <p>16 that you looked at 60 and they looked at 29, it's</p> <p>17 the information you can glean from the agreements</p> <p>18 that makes them relevant if the 60 were less</p> <p>19 informative than the 29. And I'm not saying that's</p> <p>20 your testimony. But if the 60 were less</p> <p>21 informative than the 29, then the 29 would be more</p> <p>22 pertinent to setting the rate, if that were the</p> <p>23 case?</p> <p>24 THE WITNESS: Yes, I agree. I agree</p> <p>25 with that. And, for me, it's -- there's variation</p>
6299	6301
<p>1 THE WITNESS: Yes. But I think that is</p> <p>2 correct, but it's important for me to see what kind</p> <p>3 of variation there is in the agreements, the more</p> <p>4 there is variation, the more information you get</p> <p>5 about how different circumstances might affect the</p> <p>6 agreement, so I think you're going to see -- if you</p> <p>7 look at the indie agreements, you are not going to</p> <p>8 see the kind of variation you'd see when you look</p> <p>9 at all the interactive agreements.</p> <p>10 JUDGE STRICKLER: Could that be because</p> <p>11 the indies are more in the nature of price-takers?</p> <p>12 THE WITNESS: Yes.</p> <p>13 JUDGE STRICKLER: And the majors have</p> <p>14 sufficient market power to not be mere</p> <p>15 price-takers?</p> <p>16 THE WITNESS: I think that is part of</p> <p>17 it, yes. There's more -- both -- I think both</p> <p>18 sides have some power but I think -- as I've</p> <p>19 expressed in other ways, the majors do have</p> <p>20 substantial bargaining power and that puts them in</p> <p>21 a different position, but the fact is that when I</p> <p>22 looked at the roughly 60 deals that had per-play</p> <p>23 rates, I saw a significant variation so the</p> <p>24 bargains are going on there were somewhat distinct.</p> <p>25 JUDGE STRICKLER: Leaving the</p>	<p>1 in the 60 was important and also the fact that</p> <p>2 their -- that the shadow effect was less</p> <p>3 substantial because they were interactive and not</p> <p>4 noninteractive agreements.</p> <p>5 JUDGE STRICKLER: Thank you.</p> <p>6 BY MR. POMERANTZ:</p> <p>7 Q. All right. So let's turn to the next</p> <p>8 slide, which is the steering provision.</p> <p>9 A. (Witness complies.)</p> <p>10 Q. And if you could discuss first the</p> <p>11 first two bullet points and what your views are</p> <p>12 about the steering provision?</p> <p>13 A. Well, the first -- first point is that</p> <p>14 one, I think that's been made before by others, but</p> <p>15 if Pandora has made a promise to steer in favor of</p> <p>16 Merlin you can't do that with respect to all of the</p> <p>17 other record companies because the total volume of</p> <p>18 sales is a hundred percent. If you are steering</p> <p>19 against every one then you have more than a hundred</p> <p>20 percent. So it's really an arithmetic point, but I</p> <p>21 think it's an important point.</p> <p>22 The second -- the second point is that</p> <p>23 the statutory license is not going to have a</p> <p>24 steering component to it. So it's a little hard</p> <p>25 for me to know exactly what implications you're</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6302	<p>1 going to draw from from steering, from the promise 2 of steering. Because you can't -- you're not going 3 to see it, ultimately, in the statutory license and 4 ultimately bargains are going to be bargains that 5 are made around the presence of the statutory 6 agreement.</p> <p>7 Q. Now, Professor Shapiro has testified 8 that the threat of steering, alone, would lead to 9 lower rates from record companies.</p> <p>10 What's your view of that opinion?</p> <p>11 A. I -- I don't think it's likely to 12 happen because I don't think the threat is -- is a 13 credible threat would be the term we use in 14 economics, and the reason is -- the reason is that, 15 first of all, the record companies, as I have said 16 a number of times before, do have substantial 17 bargaining power and they have responses to the 18 threat that takes away its credibility. In the 19 rather strong version, they could -- they could 20 look to other sources of listeners and say we're 21 going to consider not using your service, but they 22 don't have to go that far. They could say we're 23 not going to -- to feature all of the same artists, 24 maybe we'll take some of our top artists off our 25 offerings, and we just -- we can vary what we do</p>	6304	<p>1 the independents unable to exercise that threat?</p> <p>2 THE WITNESS: Well, you know, there are 3 so many indies, so it's hard to say. But I assume, 4 typically, they're only going to have a few artists 5 that have really the name recognition and the power 6 to make a difference. So, you know, threatening to 7 remove, say, your top artist if you're one of the 8 major indies may not have the same -- it may not be 9 as credible because without that artist you may not 10 sell many records -- I mean -- sorry -- many songs 11 at all.</p> <p>12 JUDGE STRICKLER: So if the record 13 company industry was more atomistic, the threat of 14 steering would be more credible, but because it's 15 not that atomistic to have market shares that show 16 some -- the level of concentration that exists, it 17 makes the ability of the majors to rebut the 18 threat, if you will, more likely to be successful?</p> <p>19 THE WITNESS: I think that's true. You 20 know, we're in a world that is very far atomistic. 21 That's the world we've been in for a long time and 22 I think that does affect the points I've made. So 23 yes, I agree. Highly atomistic. I can imagine 24 steering having a bigger impact. I mean, that's a 25 harder world for me to imagine because I have been</p>
6303	<p>1 for you, basically, as a service if you think 2 you're going to threaten us.</p> <p>3 And so I think the fact that they do 4 have that kind of bargaining power is really going 5 to make a threat nonviable, noneffective. And I 6 haven't seen an example of a real threat. The 7 steering that we see in iHeart as part of the 8 negotiation, it was more of a carrot than a stick 9 and that I understand. I do understand that 10 steering can have an impact. We discussed that at 11 some length, but I don't think it's, alone, a 12 credible threat. So I don't think you would see 13 everyone negotiating an agreement to steering in 14 their contracts.</p> <p>15 JUDGE STRICKLER: Professor, do you 16 think that the smaller independents have that same 17 bargaining power to make the -- to respond to the 18 threat of steering, as you just described it?</p> <p>19 THE WITNESS: No, they wouldn't have. 20 They wouldn't have quite the same bargaining power, 21 that's quite right. I mean, I think it's more 22 likely if you're going to see steering at all, it 23 would be with some of the smaller players.</p> <p>24 JUDGE STRICKLER: What do the 25 independents lack that the majors have that makes</p>	6305	<p>1 in the world of seeing three or four more major 2 companies having a pretty big impact.</p> <p>3 JUDGE STRICKLER: Thank you.</p> <p>4 BY MR. POMERANTZ:</p> <p>5 Q. All right. Let's go to the last topic 6 that you have said you wanted to address this 7 morning. It's on Slide 17. And you said you 8 wanted a response -- to respond to two different 9 critiques that you've seen and read about of your 10 interactivity adjustments. The first one you 11 describe as subscription versus ad supported. And 12 we've heard testimony from some of the other 13 economists who have testified that it's improper to 14 look at subscription prices for calculating an 15 interactivity adjustment because it ignores the 16 predominantly ad-supported model of noninteractive 17 services.</p> <p>18 What's your response to this criticism?</p> <p>19 MR. JOSEPH: Your Honor, I object to 20 these lines -- the witness fully addressed these in 21 his direct appearance. In fact, that was the 22 appropriate time to do so, at transcript 1831 to 23 32, and the second subject was 2026 to 2034. He 24 had an opportunity to respond to the rebuttals in 25 his direct and that was the scheme that the parties</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6306	<p>1 agreed to.</p> <p>2 MR. POMERANTZ: Your Honor, I actually</p> <p>3 do agree that to some extent this testimony today</p> <p>4 should be somewhat limited because of the fact that</p> <p>5 he was here for a long time the last time. That</p> <p>6 being said, this particular point he did address in</p> <p>7 his rebuttal and there's been a lot of testimony</p> <p>8 between when he was here the last time and today,</p> <p>9 and I just wanted to give him an opportunity to</p> <p>10 briefly respond to what the other experts have</p> <p>11 said, which I think is appropriate in the rebuttal</p> <p>12 phase of the case.</p> <p>13 MR. JOSEPH: Your Honor, just one last</p> <p>14 point. To the extent he addressed it in his</p> <p>15 rebuttal, it was not proper in the rebuttal because</p> <p>16 in the direct testimony of the experts they didn't</p> <p>17 criticize his models for the interactive service.</p> <p>18 They were talking about the past. So it was</p> <p>19 improper rebuttal testimony to begin with.</p> <p>20 MR. POMERANTZ: That's not true, and I</p> <p>21 can explain to you why.</p> <p>22 CHIEF JUDGE BARNETT: No.</p> <p>23 I'm going to allow it. It's just so we</p> <p>24 have all of our notes in one place on this topic.</p> <p>25 Thank you, Mr. Pomerantz.</p>	6308	<p>1 are off base because they're mixing -- they're</p> <p>2 mixing ad-supported and subscription services.</p> <p>3 They're mixing different models. So they don't get</p> <p>4 -- they don't form the real issue I wanted which is</p> <p>5 how to separate out the different functionalities</p> <p>6 in the two types of services.</p> <p>7 Q. All right. And then the second</p> <p>8 criticism that was raised by some of the economists</p> <p>9 was that you have assumed that the ratio between</p> <p>10 subscription prices and royalty rates would be the</p> <p>11 same for noninteractive services as interactive</p> <p>12 services, and they say that that assumption is</p> <p>13 unreasonable.</p> <p>14 How do you respond to that?</p> <p>15 A. That is the assumption I spelled out,</p> <p>16 and I do think it's reasonable and I can give you a</p> <p>17 brief description of why I think it's reasonable.</p> <p>18 This would be slightly technical, but I'll do my</p> <p>19 best.</p> <p>20 So, basically, in the world we're</p> <p>21 talking about, the key input to producing music is</p> <p>22 obviously recorded for music services, recorded</p> <p>23 music itself. So we have that key input and that</p> <p>24 key input drives the royalty rates. All the other</p> <p>25 inputs are relatively modest in terms of the</p>
6307	<p>1 BY MR. POMERANTZ:</p> <p>2 Q. Let me just restate the question, then.</p> <p>3 We've heard testimony from some of the</p> <p>4 other economists in this matter that it's improper</p> <p>5 to look at subscription prices for calculating an</p> <p>6 interactivity adjustment because it ignores the</p> <p>7 predominantly ad-supported model of noninteractive</p> <p>8 services.</p> <p>9 What's your response to that criticism?</p> <p>10 A. My response is that it's -- my goal was</p> <p>11 to try to get as clean a calculation that accounted</p> <p>12 for the different functionality between</p> <p>13 subscription -- between interactive and</p> <p>14 noninteractive services. And so looking, for</p> <p>15 example, at subscriptions alone allows me to do</p> <p>16 that. Looking at ad-supported services separately,</p> <p>17 which I also did, gave me a relatively clean</p> <p>18 exercise, but not as clean because the ad-supported</p> <p>19 services do -- between interactive and</p> <p>20 noninteractive do depend on different business</p> <p>21 models, and that would affect the results to some</p> <p>22 extent.</p> <p>23 But calculations that cover all the</p> <p>24 revenues like the -- one of the calculations that</p> <p>25 Professor Lichtman put forward last week, to me,</p>	6309	<p>1 variable costs. There may be very significant</p> <p>2 fixed costs. The investments, for example, that</p> <p>3 Pandora makes are very significant, but the actual</p> <p>4 incremental costs are not very high.</p> <p>5 And, furthermore, there's not likely to</p> <p>6 be much substitution between the key input, which</p> <p>7 is the music -- recorded music and the other inputs</p> <p>8 that they're not very high to start with, and I</p> <p>9 don't think there's much substitution. So if</p> <p>10 you -- if you take that world and then you add to</p> <p>11 it the fact that downstream, at least as I</p> <p>12 testified and others have as well, there's</p> <p>13 substantial competition among all the different</p> <p>14 kinds of alternative retail services, both</p> <p>15 interactive and noninteractive, which makes the</p> <p>16 elasticity of demand quite high and likely, in my</p> <p>17 view, given convergence, makes the elasticity of</p> <p>18 demand for interactive services quite similar to</p> <p>19 the elasticity for demand for noninteractive</p> <p>20 services.</p> <p>21 Now, if you take each of the components</p> <p>22 I have talked about, the fact that music is the key</p> <p>23 input, there's very little substitutability, and</p> <p>24 the downstream elasticity of demands are relatively</p> <p>25 similar for both interactive and noninteractive</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6310	<p>1 services.</p> <p>2 You can actually take the Hicks</p> <p>3 Marshall relationship that a bunch of the experts</p> <p>4 have talked about that explains how you get derived</p> <p>5 demand and you can simplify it. And the way I</p> <p>6 would simplify it intuitively would be to say let's</p> <p>7 look downstream at the so-called Lerner condition,</p> <p>8 which Professor Shapiro has referred to a number of</p> <p>9 times and other experts have as well, and the</p> <p>10 Lerner condition says that the markup of price over</p> <p>11 cost is inversely related to the elasticity of</p> <p>12 demand for that particular product.</p> <p>13 So the markup over cost is the markup</p> <p>14 over basically royalty because the royalty is the</p> <p>15 main input in the music. And if the elasticity</p> <p>16 demands are the same, then it's very easy to see if</p> <p>17 you just look at the Lerner conditions that the</p> <p>18 relationship between the royalties will be -- the</p> <p>19 ratio of the price of the royalty will be the same</p> <p>20 for both interactive and noninteractive services.</p> <p>21 It follows directly by looking at two different</p> <p>22 Lerner conditions, one for interactive and one for</p> <p>23 noninteractive services. The subscription price</p> <p>24 for the interactive is twice the subscription price</p> <p>25 for the noninteractive. If you're going to have</p>	6312	<p>1 MR. RICH: Cross-examination, Your</p> <p>2 Honor?</p> <p>3 CHIEF JUDGE BARNETT: Yes. Let's</p> <p>4 begin. We might have to break it with our break,</p> <p>5 but...</p> <p>6 MR. RICH: This can be in open session,</p> <p>7 Your Honor. I think the entire examination can be</p> <p>8 in open session.</p> <p>9 CHIEF JUDGE BARNETT: Outstanding.</p> <p>10 CROSS-EXAMINATION BY COUNSEL FOR</p> <p>11 PANDORA</p> <p>12 BY MR. RICH:</p> <p>13 Q. Good morning, Professor Rubinfeld.</p> <p>14 A. Good morning.</p> <p>15 Q. I would like to start by coming back to</p> <p>16 the colloquy you had with Judge Strickler about the</p> <p>17 relative numbers of contracts that have been drawn</p> <p>18 from by the parties in crafting their benchmarks.</p> <p>19 Do you remember that discussion?</p> <p>20 A. Yes.</p> <p>21 Q. I believe you testified, to the best of</p> <p>22 your recollection, that you drew from about 60</p> <p>23 agreements in framing your interactive services</p> <p>24 benchmark?</p> <p>25 A. Yes.</p> <p>Q. If you would take the first of the two</p>
6311	<p>1 Lerner conditions to be equal, the royalty has to</p> <p>2 be twice as high.</p> <p>3 So the assumption I made is an</p> <p>4 assumption, but it's an assumption that, to me,</p> <p>5 intuitively makes sense because it fits the</p> <p>6 conditions that we learned about it that describe</p> <p>7 the nature of competition in this industry.</p> <p>8 MR. POMERANTZ: Your Honor, I have no</p> <p>9 further questions at this time.</p> <p>10 CHIEF JUDGE BARNETT: Thank you.</p> <p>11 MR. JOSEPH: I'm sorry. Your Honor, at</p> <p>12 the risk of trying the Court's patience, I move to</p> <p>13 strike that last answer on the ground it goes far</p> <p>14 beyond a simple response into what purports to</p> <p>15 be -- probably is -- purports to be an analysis. I</p> <p>16 don't know how we get that in and get no chance to</p> <p>17 respond.</p> <p>18 MR. POMERANTZ: Your Honor, that was</p> <p>19 directly responsive to their rebuttal to Professor</p> <p>20 Rubinfeld and all the facts he testified to are in</p> <p>21 the record already.</p> <p>22 CHIEF JUDGE BARNETT: I think it was</p> <p>23 directly responsive -- or responsive, Mr. Joseph.</p> <p>24 So we'll not strike it. Overruled.</p> <p>25 MR. POMERANTZ: Thank you, Your Honor.</p>	6313	<p>1 binders that Mr. Pomerantz provided you, Mr.</p> <p>2 Rubinfeld Direct Exhibit Volume I, and turn to Tab</p> <p>3 20.</p> <p>4 A. (Witness complies.)</p> <p>5 Q. I believe it's labeled Exhibit 16-A to</p> <p>6 your written direct testimony.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Can you describe what's set forth on</p> <p>10 that exhibit?</p> <p>11 I don't mean numerically, but</p> <p>12 functionally what is that exhibit doing?</p> <p>13 A. This comes -- this comes from, I think,</p> <p>14 my initial report, and I think I would want to look</p> <p>15 at the report to put it in context. It describes a</p> <p>16 range of adjusted interactive benchmark rates. I</p> <p>17 don't recall the full context. If you need more I</p> <p>18 need to go back and look at my report.</p> <p>19 Q. Well, I'm not going to ask you, at this</p> <p>20 late date, to refresh yourself about your report,</p> <p>21 but is it accurate that this sets forth the</p> <p>22 entities and license agreements from which you drew</p> <p>23 data that you based your interactive rate</p> <p>24 calculations on?</p> <p>25 A. I believe that's correct.</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6314	<p>1 Q. Now, if you look at the next to last 2 column, which is labeled "Adjusted Minimum Per-Play 3 Rate," do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Am I correct that it is from the data 6 listed in that column that you derived your 7 per-play rate from which your rate proposal derives 8 in this case?</p> <p>9 A. I think that's likely correct, but I 10 need to go back and look at my report to be certain 11 of that. Give me just a minute.</p> <p>12 Q. Sure.</p> <p>13 A. I'm just having trouble.</p> <p>14 Q. I'm advised that the reference may be 15 at Paragraph 227 of your written direct testimony.</p> <p>16 A. Okay. Thank you.</p> <p>17 Yeah. The reason I was hesitating is 18 because the paragraph you referred me to does 19 describe Exhibit 16 and I -- you showed me 16-A and 20 I just don't recall why there's a 16-A and -- 21 rather than 16. I don't have any -- so there may 22 have been a distinction. I just don't recall what 23 made me refer to 16 in the text and this is 16-A. 24 I just don't remember the difference.</p> <p>25 Q. I'm not sure we can solve that during</p>	6316	<p>1 forms the basis for your recommendations to these 2 judges, you drew data from 26, not 60 interactive 3 service agreements, correct?</p> <p>4 A. I am not -- I gather your point, just 5 not a hundred percent sure this is the exact right 6 number, but -- because I'm not sure -- I just don't 7 recall why 16-A is different than 16, but if your 8 general point is that not all of the contracts have 9 minimum play rates, that's correct.</p> <p>10 Q. That wasn't the general point. I ask 11 you simply to answer my question --</p> <p>12 A. Well, I told you --</p> <p>13 Q. -- whether you -- hold on. Whether you 14 can cite anything in any of your testimony, any of 15 your exhibits that would refute the proposition 16 that in calculating the recommended per-play rates 17 here you relied on exactly 26 interactive service 18 agreements. That's correct, isn't it?</p> <p>19 That's a "yes" or "no."</p> <p>20 A. No. I told you I'm not certain that 21 16-A rather than 16 reflects the correct number. I 22 certainly know that the number is less than a full 23 number of contracts I looked at, but I --</p> <p>24 Q. Do you even know if you have an Exhibit 25 16 in your testimony, sir?</p>
6315	<p>1 this colloquy, but let me ask you this: Focusing 2 on that next to last column and presuming for 3 purposes of this examination that the data depicted 4 in that column are the source for the rate proposal 5 you make respecting per-play rates as depicted at 6 Paragraph 227 and following the direct examination, 7 how many data points appear in that column?</p> <p>8 A. Which column?</p> <p>9 Q. The next to last column in Exhibit 10 16-A. How many data points did you draw from in 11 that next to the last column?</p> <p>12 A. It's hard to --</p> <p>13 Q. I count 26.</p> <p>14 A. Yeah. I was going to say it's hard to 15 count exactly. I would say just under 30. So if 16 you tell me it's 26, that could be right.</p> <p>17 Q. So not 60, correct?</p> <p>18 A. Well, there were originally -- there 19 are not 60 in that column. There are originally 20 about 80 contracts, but they were not -- not all of 21 them had minimum per-play rates. Many of them had 22 other parts of the contract, but not minimum 23 per-play rates.</p> <p>24 Q. So the record is clear, in deriving 25 what you call your minimum per-play rates that</p>	6317	<p>1 A. I told you I don't recall. I don't 2 have any recollection that I -- recollection at all 3 as to why this is 16-A.</p> <p>4 Q. Now, in Paragraph 3 of your written 5 rebuttal testimony you state as to the 6 iHeart-Warner and Merlin-Pandora agreements that, 7 quote, "neither is informative," unquote.</p> <p>8 Do you recall that testimony?</p> <p>9 A. And where did you say, sir?</p> <p>10 Q. Paragraph 3 of your written rebuttal 11 testimony.</p> <p>12 A. Let me dig that out.</p> <p>13 Yes.</p> <p>14 Q. And, again, at Paragraph 74 of that 15 testimony you state that you find that the 16 Pandora-Merlin deal, quote, "to be uninformative as 17 a benchmark for this proceeding," unquote; is that 18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. You actually don't believe that to be 21 the case, do you?</p> <p>22 A. You will have to explain.</p> <p>23 Q. You actually believe that the judge 24 should consider these benchmarks, don't you?</p> <p>25 A. No, I believe -- well, one could</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6318	<p>1 consider all the evidence, but I believe the right</p> <p>2 way -- the best way to go at -- informing the issue</p> <p>3 at hand is to focus on the interactive agreements</p> <p>4 the way I have described.</p> <p>5 Q. Do you recall at your deposition</p> <p>6 indicating that you thought it was an unfortunate</p> <p>7 choice of words on your part to call these</p> <p>8 uninformative?</p> <p>9 A. I may have said that, yes.</p> <p>10 Q. Do you have a different view today?</p> <p>11 A. Well, we've had -- the reason I -- I</p> <p>12 probably said that would be -- was because we had</p> <p>13 discussion about these agreements and the</p> <p>14 agreements are part of the picture, and I think</p> <p>15 it's reasonable to take them into account. So</p> <p>16 maybe uninformed of saying we should literally</p> <p>17 disregard them may be too strong a statement.</p> <p>18 Q. You also characterize the</p> <p>19 Merlin-Pandora, and iHeart-Warner agreements as,</p> <p>20 quote, "atypical," unquote, don't you again in</p> <p>21 Paragraph 3?</p> <p>22 A. Yes.</p> <p>23 Q. For reasons we'll discuss further; but</p> <p>24 here, again, you wouldn't urge the judges to</p> <p>25 totally disregard them on the basis of what you</p>	6320	<p>1 Q. But that description of the license as</p> <p>2 a trial license is another one that you no longer</p> <p>3 stand by; isn't that true?</p> <p>4 A. I -- it sounds like you're recalling</p> <p>5 something I said on a deposition, which I don't</p> <p>6 actually recall.</p> <p>7 Q. Do you believe sitting here today that</p> <p>8 the Merlin license was accurately described as a</p> <p>9 trial license?</p> <p>10 A. Well, it's an agreement that was</p> <p>11 actually reached and put in place, but I -- I</p> <p>12 believe at the time I wrote this I viewed it as a</p> <p>13 trial license because I believe that there was --</p> <p>14 the thought was that if the license was successful</p> <p>15 for both parties it would continue beyond the</p> <p>16 two-year period.</p> <p>17 Q. Does that make it distinguishable from</p> <p>18 almost any other license in which parties,</p> <p>19 depending on the success or lack of success of a</p> <p>20 commercial agreement, will decide whether to carry</p> <p>21 forward or continue or extend that agreement?</p> <p>22 A. I think every license has to be treated</p> <p>23 separately.</p> <p>24 Q. And with respect to its two-year term,</p> <p>25 please remind the judges of the average duration of</p>
6319	<p>1 term their atypical nature, would you?</p> <p>2 A. I think they should be given, let's</p> <p>3 say, very little weight, not just because they're</p> <p>4 atypical, but because of the reasons I have stated</p> <p>5 earlier today and earlier in my report. There are</p> <p>6 specific reasons. The fact that they're negotiated</p> <p>7 in the shadow of the current hearing as well as</p> <p>8 the -- if we're talking about Merlin and the shadow</p> <p>9 of the Pureplay rates.</p> <p>10 Q. In Paragraph 71 of your written</p> <p>11 rebuttal testimony, turn to that, please.</p> <p>12 A. (Witness complies.)</p> <p>13 CHIEF JUDGE BARNETT: This is the</p> <p>14 restricted material?</p> <p>15 MR. RICH: I think what I am citing --</p> <p>16 thank you, Your Honor -- will not impinge on</p> <p>17 restricted status.</p> <p>18 THE WITNESS: I'm there.</p> <p>19 BY MR. RICH:</p> <p>20 Q. You further criticize the Merlin</p> <p>21 agreement as quote, "a two-year trial license,"</p> <p>22 unquote, that is, quote, "in sharp contrast to the</p> <p>23 statutory licenses five-year term," unquote.</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>	6321	<p>1 the interactive services agreements in which you</p> <p>2 rely for benchmarking?</p> <p>3 A. I don't know the exact average, but</p> <p>4 they're in the same ballpark.</p> <p>5 JUDGE STRICKLER: Which same ballpark</p> <p>6 is that?</p> <p>7 THE WITNESS: Yeah, same ballpark,</p> <p>8 through typically in the two-year range.</p> <p>9 BY MR. RICH:</p> <p>10 Q. Now, you'll recall that in your written</p> <p>11 direct testimony you derived from the Web III</p> <p>12 remand determination four economic tests to</p> <p>13 evaluate potential benchmarks.</p> <p>14 Do you recall that?</p> <p>15 A. Yes.</p> <p>16 Q. And at Page 14 of your written rebuttal</p> <p>17 testimony you assert in the caption to the</p> <p>18 succeeding section that the Merlin agreement quote,</p> <p>19 "fails the judges' comparability test," unquote,</p> <p>20 correct?</p> <p>21 A. Where are you, sir?</p> <p>22 Q. Page 14 of your written rebuttal</p> <p>23 testimony.</p> <p>24 CHIEF JUDGE BARNETT: Do you have a</p> <p>25 paragraph number?</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6322	6324
<p>1 THE WITNESS: It's a heading, Your 2 Honor. 3 MR. RICH: It's a heading in Section B, 4 Your Honor. 5 CHIEF JUDGE BARNETT: Oh, thank you. 6 THE WITNESS: Heading 1 under Section 7 B, Your Honor. 8 BY MR. RICH: 9 Q. The Pandora-Merlin agreement fails the 10 judges' comparability test and is an inappropriate 11 benchmark." 12 Did I read that correctly? 13 A. You did. 14 Q. Now, let's examine that contention 15 against your chosen four economic tests. If we 16 could put up on the screen the text of Paragraph 17 122 from your written direct testimony, and I'll 18 represent to you and to the judges that that's an 19 actual transcription just blown up for convenience 20 of the text of your four economic tests. 21 Do you recognize those, sir? 22 MR. RICH: Why don't we hand the 23 witness a paper version of this if it will be 24 easier. 25 THE WITNESS: I do recognize it if that</p>	<p>1 Webcasting services and the sellers are record 2 companies;" is that correct? 3 A. Yes. 4 Q. You would agree that the Merlin deal 5 was entered into between a statutory Webcasting 6 service and record companies, correct? 7 A. I would agree with that. 8 Q. So it doesn't flunk the second test 9 either, does it? 10 A. It does not, but the -- I was not 11 asking the question the way you described it is 12 whether one flunks a test or not. The question is 13 how relevant the test is in forming the ultimate 14 question as to whether something is a good 15 benchmark. So, certainly, B set -- both parties 16 satisfied B. A, I would say I have issues with for 17 reasons I described. 18 Q. Okay. Let's keep going. Three -- now, 19 C is the statutory license test, correct? Meaning 20 that the transaction occurred in a hypothetical 21 marketplace in which there is no statutory license, 22 correct? 23 A. Yes. 24 Q. And you agree that all the license 25 agreements that are before the judges for</p>
6323	6325
<p>1 helps. 2 BY MR. RICH: 3 Q. Okay. Let's go through these one by 4 one. Willing buyer and willing seller test. You 5 would agree, wouldn't you, that the Merlin-Pandora 6 agreement is the product of negotiations between a 7 willing buyer and willing seller? 8 A. Yes. My only concern would be whether 9 the hypothetical marketplace is affected by the 10 shadow of the existing agreements. 11 Q. Which you get to in Part C, correct? 12 A. I think the shadow affects the number 13 parts, not just Part C. 14 Q. You wouldn't dispute this agreement was 15 entered into between a willing buyer and a willing 16 seller, correct? 17 A. That's correct. 18 Q. Okay. So it doesn't flunk the first 19 test, right? 20 A. No, I don't think it flunks the test. 21 Q. Okay. Number 2 is same parties test, 22 do you see that? 23 A. Yes. 24 Q. Which you define as quote, "the buyers 25 in this hypothetical marketplace are the statutory</p>	<p>1 consideration are affected to some degree by the 2 shadow of the statutory license, correct? 3 A. Yes, but that degree varies 4 substantially. 5 Q. Hold on. 6 And I was going to say, nonetheless, 7 you believe that the Merlin deal was directly 8 influenced by the presence of the statutory license 9 to the extent that it should be given reduced 10 weight as a benchmark, correct? 11 A. Well, not just the statutory license, 12 but the -- with Pandora-Merlin, the presence of the 13 Pureplay agreement. 14 Q. And I'll accept that as falling within 15 the ambit for this purpose of the statutory 16 license. Thank you. 17 And that's also a subject we'll turn 18 to. 19 Now, let's look at the last test, same 20 rights test, which you define as quote, "the 21 product sold consists of a blanket license for the 22 record companies' complete repertoire of sound 23 recordings to be used in compliance with the DMCA 24 requirements," unquote, correct? 25 A. Yes.</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6326	<p>1 Q. And you would agree that the Merlin 2 agreement, with the adjustments proposed by 3 Professor Shapiro for skips and pre-1972 4 recordings, meets this criterion, correct? 5 A. Yes. There's a small issue about 6 skips, but I don't think it's significant. I think 7 generally this would be correct. 8 Q. So even giving a check minus to you're 9 a, with the reservations and assuming it doesn't 10 double count your concerns in C, you would agree 11 with me that we get two checks, one check minus, 12 and one X in stacking up against your four economic 13 tests of the Pandora-Merlin agreement, correct? 14 A. This is not a system I would use for 15 evaluating the benchmarks. I wouldn't do this by 16 having checks and check minuses. 17 Q. You stand by your summary that the 18 Pandora-Merlin agreement fails the judges' 19 comparability test according to your own 20 comparability criteria, correct? 21 A. Yes. 22 Q. Okay. Turning back to the statute, the 23 shadow of the statutory license, you cite as the 24 most fundamental reason the Merlin agreement is an 25 inappropriate benchmark. It's having been, quote,</p>	6328	<p>1 say because I can imagine some conditions under 2 which they might want to go somewhat above the 3 Pureplay rate, but I would say that would surprise 4 me if it did. 5 Q. Yeah. 6 And that Merlin, accordingly, would 7 have been unsuccessful had it attempted to 8 negotiate such rates, meaning above Pureplay in all 9 likelihood, correct? 10 A. I -- I would say that's generally true, 11 but the qualifier I have is that when the 12 negotiations include many dimensions, there may be 13 certain features that have value to you that are 14 not reflected simply on the Pureplay rate and 15 then -- so then we could get into a question as to 16 how to value those additional features. And from 17 the point of view of, say, Merlin, it may be those 18 features give it greater value than they would get 19 under the Pureplay rate. 20 Q. But how does -- how does your criticism 21 that the Pandora-Merlin agreement is -- should be 22 discounted or given reduced weight on account of 23 the direct influence of the Pureplay rates? How 24 does that explain why Merlin would have agreed to 25 rates below the Pureplay rates if, as you</p>
6327	<p>1 "directly influenced by the Pureplay rates," 2 unquote. That's from your written direct testimony 3 of Paragraph 64; is that correct? 4 JUDGE FEDER: Written rebuttal. 5 BY MR. RICH: 6 Q. Written rebuttal testimony. 7 Did I misspeak? 8 A. Yeah, I have it. That is correct. 9 Q. And you go on to say in this regard 10 that because Pandora had the option to elect the, 11 quote, "below market," unquote Pureplay rates, 12 Merlin was deprived of the ability to negotiate a 13 market rate," correct, same paragraph? 14 A. Yes. You just left out the ellipses 15 saying that the Pureplay rates are not 16 precedential; but, otherwise, that's correct. 17 Q. Thank you. 18 And by below market you meant below the 19 statutory Web III rates; is that correct? 20 A. Yes. 21 Q. Okay. So I take it that your view is 22 that Pandora would never enter into a direct 23 license agreement above the Pureplay rates during 24 the term of the Pureplay agreement, right? 25 A. I wouldn't quite say never, but I would</p>	6329	<p>1 hypothesize, the Pureplay rates are, quote, "below 2 market rates"? 3 A. I'm not convinced that Merlin has 4 agreed to rates that are below the Pureplay rates 5 from their point of view. My analysis suggests 6 that that's not true. 7 Q. And where is that analysis set forth in 8 any of your written testimony to demonstrate that 9 Merlin agreed to rates that were not below the 10 Pureplay rates? 11 A. Well, I've read the testimony in the 12 record by various experts that suggested that the 13 rate was below the Pureplay rate, and I did not 14 find that convincing. Everything I read is 15 entirely consistent with the rates being at or -- I 16 would say at the Pureplay rates. 17 Q. And what is this everything that you've 18 read that indicates that the rates are at or above 19 the Pureplay rates? 20 A. Well, for example, some of this goes 21 back further in time, but I think we're going to 22 hear from Mr. Lexton coming up soon. I've read his 23 written testimony, and that was consistent with the 24 rates being at the Pureplay rates. He described a 25 lot of the elements of the Pandora-Merlin deal from</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6330	<p>1 Merlin's perspective and those items, as he 2 describes, or will describe it from Merlin's point 3 of view has significant value. 4 Q. Anything else that you can recall other 5 than what you understand the purport of Mr. 6 Lexton's testimony to be? 7 A. Well, I have -- I've read testimony 8 from experts for Pandora describing their 9 perspective, for example, Dr. Shapiro. I don't 10 read -- I can't recall off the top of my head all 11 the specifics of the testimony that I've heard -- 12 that I read, sorry, but I remember Dr. Shapiro 13 talking about this issue as well. 14 Q. And do you recall Dr. Shapiro 15 testifying to the effect that the proper economic 16 interpretation of the Merlin-Pandora deal is that 17 it calls for effective rates at or above Pureplay? 18 A. Not specifically, but that would not 19 surprise me, but I -- I mean, maybe I'm confusing 20 it. I thought you -- you were asking me whether or 21 not I had found -- what I had seen that suggests 22 that the rates were at the Pureplay rate, and I 23 thought I explained -- I've already explained that 24 it's conceivable the rates could go so much higher 25 from the point of view of these parties. So I'm</p>	6332	<p>1 issue I did not find any analysis -- I have seen 2 compelling. 3 Q. Did you do any of your own analysis of 4 the economics of the Merlin-Pandora deal; yes or 5 no? 6 A. Sure, but by analysis, I mean, I 7 evaluated the work that others have done. If by 8 analysis, you mean did I do my own calculations -- 9 Q. Yes. 10 A. -- on a number of these elements? 11 Q. Yes. 12 A. Many of these elements are very 13 difficult to analyze numerically. That's why 14 there's -- I can -- that's why there's some 15 difference of opinion. 16 Q. So is the answer no, you did not do 17 such an analysis? 18 A. No, I don't think that's a fair 19 characterization. To me, analysis means looking at 20 an issue as carefully as you can with the 21 information you have. It doesn't mean it's limited 22 to doing calculations. 23 JUDGE STRICKLER: Professor, if we 24 stick with the Pandora-Merlin agreement so we have 25 a stated rate for the final year of .14 with</p>
6331	<p>1 not sure -- 2 Q. Sir, I wasn't asking you what's 3 conceivable. I was asking you what basis, whether 4 from your own analysis or from any of the testimony 5 you've reviewed, leads you to form a professional 6 opinion as an economist that the best and most 7 proper reading of the Merlin-Pandora deal is that 8 it calls for rates at or above the Pureplay rates? 9 A. Calls for rates. I'm not sure what you 10 mean. I'm saying that when I read the testimony 11 that I've cited I found the testimony that 12 suggested that the rates were below the three 13 per-play rates not to be compelling and not just 14 beyond what I just told you. I can't give you 15 specific cites off the top of my head. This issue 16 has come up, I think, several times during the 17 proceeding. 18 Q. Did you do any calculations yourself of 19 the terms of the Pandora-Merlin deal to support the 20 conclusion that all the other analyses done, for 21 example, by Professor Shapiro is, quote, 22 "unconvincing" as to where those rates really 23 settle at? 24 A. I didn't say all of Professor Shapiro's 25 analyses are unconvincing. I just said on this</p>	6333	<p>1 steering, it could go down to .11. Now, as I 2 understand it, the questions and answers that have 3 been going back and forth for now deal with whether 4 or not the actual effective rate, as opposed to 5 that headline rate, is below, at, or perhaps even 6 above the Pureplay rate. 7 To determine that, don't you need to 8 know -- it seems that was a -- and correct me if 9 I'm wrong, we need to know the value, market value 10 of the other items within the Pandora-Merlin 11 agreement which you itemized on one of your slides, 12 correct? 13 THE WITNESS: Yes. 14 JUDGE STRICKLER: Is there any reason 15 to believe -- is there any reason to assume that 16 both Pandora and Merlin had the same -- assigned 17 the same value to those other items individually or 18 in sum? 19 THE WITNESS: I would not be 20 comfortable making that assumption. That's one of 21 the reasons it's difficult to evaluate the value of 22 these items. 23 JUDGE STRICKLER: You said it's 24 variations among the parties in these transactions 25 with regard to value which is why you want to look</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6334	<p>1 at a number of transactions. So it could actually 2 be the case, could it not, that depending on from 3 whose perspective you're looking at, the 4 Pandora-Merlin agreement, the rate -- the effective 5 rate could be either above the Pureplay rate, at 6 the Pureplay rate, or below the Pureplay rate. For 7 example, if Pandora is paying .11 and is giving 8 certain extra items of value, that it only values 9 at .01, it's paying effectively .12. But if that 10 was still extra items of value, you have some 11 bargaining going on there, right, and you're 12 getting -- and Merlin values these extra items at 13 .4, exaggerate it a bit for purposes of the 14 example, it's getting .15 -- values at .04. So it 15 would be .11 plus .04 is .15, which is above the 16 Pureplay rate.</p> <p>17 So depending -- you know, beauty is in 18 the eyes of the beholder, right, depending on who's 19 valuing these other items. We may be above the 20 Pureplay rate, at the Pureplay rate, or below the 21 Pureplay rate; is that accurate?</p> <p>22 THE WITNESS: Well, I think it's 23 accurate almost all the way. I wouldn't quite 24 go -- agree with one thing you said. So I think 25 the -- the -- I agree totally that each party could</p>	6336	<p>1 we've seen so far, assigned particular values to 2 these items?</p> <p>3 THE WITNESS: Right.</p> <p>4 JUDGE STRICKLER: To that extent, isn't 5 the answer that it's indeterminate as to whether 6 the rates of the Pandora-Merlin agreement are 7 below, above or equal to the Pureplay rate?</p> <p>8 THE WITNESS: I would be comfortable 9 with that conclusion, yes. I just wanted to make 10 it clear I did not find the argument that the rates 11 were below to be compelling, but I think the 12 conclusion that we're not sure whether they're 13 below or above is one I would be comfortable with.</p> <p>14 JUDGE STRICKLER: Thank you.</p> <p>15 BY MR. RICH:</p> <p>16 Q. I take it you stand by your testimony 17 in your written direct testimony at Paragraph 90 18 where you state that, quote, "if the statutory rate 19 is too high, i.e., exceeds the market rates that 20 will be voluntarily negotiated between willing 21 buyers and willing parties in the absence of the 22 statutory license," which will be willing sellers, 23 "then licensees and licensors have a joint 24 incentive to renegotiate. One would expect that 25 the negotiation would arrive at the lower market</p>
6335	<p>1 place a different value on the deal and it's also 2 correct that some of the components are ones that I 3 haven't -- I'm not sure Dr. Shapiro has either -- 4 put specific numerical values on because it's very 5 difficult to do that.</p> <p>6 So if the question is if the two 7 different parties place different values, how do 8 you describe the value of the deal because it's 9 different for two parties? And I think -- I agree 10 with you that that's quite possible. It's quite 11 possible that in certain deals that both parties 12 are risk takers and they might decide that they 13 want to have, say, a fixed component, a fixed 14 guarantee, and that will allow them to take the 15 risk that they'll both be better off if there is a 16 successful performance, in which case, the value of 17 the deal will be higher than the rate, somewhat 18 higher. So I think any of those possibilities 19 exist.</p> <p>20 I was just saying to Mr. Rich that when 21 I looked at the arguments that the rates were 22 below, I didn't find those arguments compelling, 23 but I agreed that that's a possibility.</p> <p>24 JUDGE STRICKLER: Because neither 25 party, as far as I know from the evidence that</p>	6337	<p>1 rates," unquote.</p> <p>2 I take it you stand by that testimony?</p> <p>3 MR. POMERANTZ: I'm sorry. You said 4 Paragraph 90 and I'm not seeing it.</p> <p>5 JUDGE STRICKLER: Written direct?</p> <p>6 MR. RICH: Written direct testimony.</p> <p>7 MR. POMERANTZ: Oh, written direct.</p> <p>8 Your Honor, I would object. We're here 9 only on rebuttal, and I don't see any reason we're 10 going back to direct testimony.</p> <p>11 MR. RICH: This is just tying it to 12 this line of examination, Your Honors.</p> <p>13 CHIEF JUDGE BARNETT: Overruled. We 14 can do this.</p> <p>15 THE WITNESS: I can't recall whether 16 you read the entire paragraph, but...</p> <p>17 BY MR. RICH:</p> <p>18 Q. What's stated in Paragraph 90 you stand 19 by it, correct?</p> <p>20 A. Yes. I just want to stress that the 21 last sentence is important because I said we did 22 not see widespread renegotiations in the statutory 23 rate and one can infer that the rate is not too 24 high.</p> <p>25 Q. And you wrote that prior to your</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6338	<p>1 awareness of the Pandora-Merlin deal, correct?</p> <p>2 A. That's correct.</p> <p>3 Q. Now, you agree that Merlin was not</p> <p>4 compelled to enter into the agreement with Pandora,</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. And it could have always fallen back on</p> <p>8 the Pureplay rates had it chosen to do so, correct?</p> <p>9 A. Yes.</p> <p>10 Q. And it, nevertheless, chose to enter</p> <p>11 into the agreement, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And thousands of Merlin labels have</p> <p>14 signed on to that agreement, correct?</p> <p>15 A. I don't know the number, but I think</p> <p>16 it's quite a substantial number.</p> <p>17 Q. Now, you also criticized the service --</p> <p>18 MR. RICH: I'm moving to a new area,</p> <p>19 Your Honors, if you want to take the morning break.</p> <p>20 CHIEF JUDGE BARNETT: Great. Thank</p> <p>21 you. You read my mind.</p> <p>22 (A short recess was taken.)</p> <p>23 CHIEF JUDGE BARNETT: Please be seated.</p> <p>24 Go ahead.</p> <p>25 MR. RICH: Thank you.</p>	6340	<p>1 That's in Paragraph 3.</p> <p>2 I should have completed it to say you</p> <p>3 criticize both the iHeart-Warner and Merlin-Pandora</p> <p>4 agreements.</p> <p>5 A. That's correct.</p> <p>6 Q. And the basis of your criticism is that</p> <p>7 the services could not offer every record label the</p> <p>8 same incentives, correct?</p> <p>9 A. Yes.</p> <p>10 Q. And by "first mover advantage" in the</p> <p>11 present context, you mean being the first record</p> <p>12 companies to negotiate direct licenses at other</p> <p>13 than the statutory rate, correct?</p> <p>14 A. Well, the only question I'm hesitating</p> <p>15 about is whether we should describe it as the</p> <p>16 services -- from a services' point of view or from</p> <p>17 the point of view of the record companies in the</p> <p>18 sense it's both.</p> <p>19 Q. I'll just indicate that that was a</p> <p>20 manner in which you phrased it at your recent</p> <p>21 deposition. But however you want to modify that is</p> <p>22 your opportunity.</p> <p>23 A. Well, I think it's both. But I mean in</p> <p>24 Paragraph 3, which I was looking at, I described it</p> <p>25 in terms of the services. I may have described it</p>
6339	<p>1 BY MR. RICH:</p> <p>2 Q. Professor Rubinfeld, did you review</p> <p>3 Appendix D to Professor Shapiro's written direct</p> <p>4 testimony in which he accounts item by item for</p> <p>5 what you term the full bundle of consideration that</p> <p>6 was exchanged between the parties to the</p> <p>7 Pandora-Merlin deal?</p> <p>8 A. Yes, I would have read his entire</p> <p>9 testimony.</p> <p>10 Q. Just so the record is clear, you</p> <p>11 undertook no such item-by-item evaluation of your</p> <p>12 own; is that correct?</p> <p>13 A. By "evaluation," you mean putting</p> <p>14 numerical values on each of the components, that</p> <p>15 would be correct.</p> <p>16 Q. Trying to put some value component to</p> <p>17 those, yes.</p> <p>18 A. That's correct.</p> <p>19 Q. Thank you.</p> <p>20 Now, in your written rebuttal</p> <p>21 testimony, you criticize the services' direct</p> <p>22 licenses as both the iHeart-Warner license and the</p> <p>23 -- to the extent that they offer the participating</p> <p>24 record labels what you term, quote, "first mover</p> <p>25 advantages" and, quote, "market share boosts."</p>	6341	<p>1 the other way in my deposition. Either would be</p> <p>2 appropriate.</p> <p>3 Q. Thank you.</p> <p>4 And you acknowledge that the reason a</p> <p>5 record company would seek a first mover advantage</p> <p>6 would be to secure a competitive advantage over</p> <p>7 second or third movers, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And the nature of that advantage could</p> <p>10 include obtaining more market share at the expense</p> <p>11 of one's competitors, right?</p> <p>12 A. It could be, yes.</p> <p>13 Q. And the term "market share boost" is</p> <p>14 another way to describe steering to gain market</p> <p>15 share, correct?</p> <p>16 A. No. I don't think that's correct. It</p> <p>17 doesn't necessarily have to involve steering.</p> <p>18 In the Warner agreement you're getting</p> <p>19 a market share boost by just getting a payment that</p> <p>20 reflects a bigger share of the market. I think</p> <p>21 that might be also characterized as a market share</p> <p>22 boost.</p> <p>23 You're getting more funds, and that</p> <p>24 could be at the advantage of your competitors</p> <p>25 without actually necessarily guaranteeing that</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6342	<p>1 you'll have plays equal to the boost that you got 2 through the financial arrangement. 3 Q. Let me just read you one passage from 4 your deposition, if you need to see it. I don't 5 think you will. Let me just see if this is 6 accurate. Not necessarily incompatible with what 7 you said, but I want to be sure. 8 You were asked at Page 348 of your 9 deposition, beginning at Line 24: "Now what do you 10 mean by market share boosts?" 11 And your answer at the top of 349 was: 12 "An agreement that says that we will compensate you 13 based on a higher share than the share of spins 14 that you've had in the past and that we will -- we 15 will put in place some effort to actually increase 16 the number of spins that you achieve." 17 Do you recall making that statement? 18 A. I don't recall it, but it sounds 19 exactly like something I would have said. So if 20 you tell me that's in my deposition, I have no 21 reason to disagree. 22 Q. Thank you. 23 And you would acknowledge that such 24 steering, were it to take place, reflects 25 competition at work, yes?</p>	6344	<p>1 ability to withhold their entire catalogs, correct? 2 A. So in Paragraph 153 I used withholding 3 of the entire catalog as one possible response. I 4 said -- I described it as an example. 5 In my testimony earlier today, I 6 described other possible responses that also could 7 defeat the steering exercise. 8 Q. But you believe that a viable scenario 9 in this hypothetical market, as you would envision 10 it, would allow, in your words -- Universal, for 11 example, could use as leverage its ability to 12 withhold its entire catalog, which would leave 13 Pandora in a similar bargaining situation as 14 Spotify would be in the interactive space, correct? 15 A. I believe that's an example. I would 16 think it would be -- it would be a strong strategic 17 response. It's quite possible that, if we're in a 18 situation, that Universal maybe would not need to 19 be as aggressive as saying, "We're going to 20 withhold the entire catalog." There are other 21 options they would have as well. But yes, this 22 would be one possibility. 23 Q. And this was one that you proffered in 24 your testimony. 25 A. I did.</p>
6343	<p>1 A. Yes. I would say it does. 2 Q. Nevertheless, it's your view that 3 direct license agreements between record labels and 4 noninteractive services that feature first mover 5 advantages and market share boosts should be given 6 reduced weight by the judges here, correct? 7 A. Yes. Because they're arrangements that 8 can't be replicated across the industry, which is I 9 think what you're looking for when you're trying to 10 design a statutory rate, is something that would 11 apply to everyone. 12 Q. And in your view, in Paragraph 70 of 13 your written rebuttal testimony, the statutory 14 license doesn't contemplate such forms of 15 competition, correct? 16 A. Let me look at Paragraph 70. 17 Yes. That's correct. 18 Q. Now, also as to steering, you claim in 19 Paragraph 153 of your written rebuttal testimony 20 that, insofar as the majors are must-haves for 21 noninteractive services to the same degree as they 22 are with respect to interactive services, steering 23 efforts by noninteractive services directed to 24 majors in a hypothetical market where there is no 25 statutory license would be thwarted by the majors'</p>	6345	<p>1 Q. Correct? 2 A. Yes. 3 Q. Because you believed it to be a real 4 possibility, correct? 5 A. Yes. 6 Q. And the interactive space in which you 7 -- to which you advert, that is the space in which 8 Spotify occupies, is one in which the majors have 9 all or nearly all the bargaining power, correct? 10 A. Well, that's what I said at the time of 11 the Universal-EMI deal, if that's what you're 12 quoting. 13 My view is there's been a -- I'm not 14 sure it's exactly the same language now. 15 Are you quoting from -- are you quoting 16 from the Universal-EMI deal? I forget the exact 17 adjective I use. 18 Q. I believe, during your direct 19 examination, you said you had a quibble or at least 20 a difference with the stated position of one of the 21 majors as to the degree of bargaining power that 22 was represented that a major has to the FTC. 23 And you said, in your view, the 24 representation by that major that it had all the 25 bargaining power overstated somewhat your</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6346	<p>1 perspective, which was that a major had nearly or 2 almost all the bargaining power; is that correct? 3 A. I would have said something to that 4 effect. But I just want to add that, over the 5 three or four years since that period in time has 6 passed, I think there's been a small change. I 7 wouldn't say a large change. 8 I think there's been some additional 9 bargaining power on the part of the services. 10 Still I would say most of the bargaining power is 11 in the hands of the record labels. 12 Q. And that's since the time when four 13 majors went to three majors? 14 A. Yes. And also since the time in which 15 there's been substantial convergence in the 16 industry. 17 Q. Yeah. And so this dynamic that you 18 advert to or hypothesize in your Paragraph 153 in 19 which a Universal could withhold its entire 20 repertoire if Pandora threatened to steer I take it 21 is a market dynamic that meets the effective 22 competition test mandated by this proceeding, in 23 your view? 24 A. Sounds like you're asking me -- if 25 you're asking me for a legal opinion, first, I</p>	6348	<p>1 Professor Rubinfeld may be in his direct testimony. 2 MR. RICH: I'm sorry. 3 JUDGE STRICKLER: It's in his rebuttal 4 testimony. 5 MR. POMERANTZ: Just check to see 6 direct or rebuttal. 7 BY MR. RICH: 8 Q. Are you in your rebuttal testimony? 9 A. I am. Oh, I see it now. Yeah, I just 10 -- I missed it. 11 Yes. It does say -- 12 Q. Second sentence. 13 A. I did say it's a uniquely situated 14 buyer and seller. 15 Q. Yes. Let's examine that as to each of 16 the parties, if we can. 17 As to Merlin, I take it this is your 18 view principally because Merlin's members' directly 19 licensed catalogs represent a small percentage of 20 total Merlin spins, correct? 21 A. I'd say that's the primary reason. I 22 mean also Merlin's unusual because it has so many 23 labels that are members of Merlin and because those 24 labels do have the option of going along with the 25 negotiated agreement or not.</p>
6347	<p>1 don't believe -- 2 Q. No. As -- 3 A. -- I have a legal opinion. 4 Q. -- an economist. 5 A. Yes. I think this is -- this market is 6 competitive in the sense I've been using the term 7 "competitive." That is -- I forget the exact 8 definition, but I think both parties have some -- 9 have bargaining power, and we've seen evidence of 10 competition throughout this hearing. 11 Q. Now, you also contend that Merlin and 12 Pandora are, quote, "uniquely situated buyers and 13 sellers." That's at Paragraph 65 of your written 14 rebuttal testimony. 15 Do you recall that? 16 A. Maybe I'm in the wrong place, but I'm 17 not seeing that. 18 Can you double-check the cite? 19 Q. Do you -- I think you're right. I may 20 have a miscite. 21 Do you recall, however, characterizing 22 the parties as uniquely situated? 23 JUDGE STRICKLER: I think it is in 24 Paragraph 65. 25 MR. POMERANTZ: Yeah. I think maybe --</p>	6349	<p>1 So even though there are many labels 2 that -- many -- yeah, many labels, they don't 3 necessarily have to go along with any negotiated 4 agreement that Merlin might reach. 5 Q. And I believe, as you reinforced on 6 your redirect examination by Mr. Pomerantz, you 7 said that, while Merlin is a significant label, 8 it's not a major and doesn't have the -- my word 9 now -- clout of a major label, correct? 10 A. Yes. I just would -- I wouldn't 11 describe it as a label. I'd say it's a significant 12 player but not nearly as significant as one of the 13 majors. 14 Q. As one of the majors. Right. 15 And such that, as you state in 16 Paragraph 66, quote, "Merlin's interests and 17 incentives likely differ substantially from those 18 of the major labels," unquote, correct? 19 A. Yes. 20 Q. But you haven't made any analysis of 21 nor drawn any conclusions as to the relative 22 quality of the catalogs of Merlin members vis-à-vis 23 the majors, have you? 24 A. If by that you mean that I have not 25 looked at the artists that are covered in the</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6350	<p>1 labels and evaluated their success or lack of it --</p> <p>2 Q. Yes.</p> <p>3 A. -- that would be correct.</p> <p>4 Q. Okay. And nor have you undertaken any</p> <p>5 study of the relative promotional or substitutional</p> <p>6 effects of spins on Pandora of songs of the majors</p> <p>7 versus those of the Merlin labels, true?</p> <p>8 A. That would be true if, again, by</p> <p>9 "analysis" you mean anything on the numerical side,</p> <p>10 that would be correct.</p> <p>11 Q. Any empirical analysis.</p> <p>12 A. That would be correct.</p> <p>13 Q. And likewise, you haven't undertaken</p> <p>14 any analysis of the relative steering ability</p> <p>15 possessed by Pandora in relation to spins of the</p> <p>16 majors versus the Merlin labels; isn't that also</p> <p>17 true?</p> <p>18 A. I think my answer is yes, with the</p> <p>19 qualification that I have carefully evaluated the</p> <p>20 steering analyses that others have done --</p> <p>21 Q. And we'll get to that --</p> <p>22 A. -- but have not --</p> <p>23 Q. We'll look at that --</p> <p>24 A. -- done a separate --</p> <p>25 Q. Thank you. We'll get to that in a bit.</p>	6352	<p>1 indicate you're unconvinced by the conclusions</p> <p>2 Professor Shapiro reached on two topics: one,</p> <p>3 Pandora's relative elasticity of demand for the</p> <p>4 catalogs of the majors and the Indies; and two, the</p> <p>5 promotional effect of Pandora on majors and the</p> <p>6 Indies.</p> <p>7 You say you're unconvinced by his</p> <p>8 analyses, correct?</p> <p>9 A. I just -- that's not a description of</p> <p>10 exactly what I say in Paragraph 66. So I'm just</p> <p>11 confused about how to answer your question.</p> <p>12 Q. Well, do you or do you not find</p> <p>13 unconvincing Professor Shapiro's assertion that</p> <p>14 there is no meaningful difference for the major</p> <p>15 labels and the Indy labels in the, little one,</p> <p>16 marginal cost to the label, and two, the services'</p> <p>17 elasticity of demand for the label's catalogs?</p> <p>18 A. Yes. I agree with that.</p> <p>19 Q. Okay. But it is also the case that,</p> <p>20 while you are unconvinced by his conclusions, but</p> <p>21 beyond that naked statement, you've not presented</p> <p>22 the judges with any evidence of your own that would</p> <p>23 contradict, let alone undermine, his conclusions,</p> <p>24 have you?</p> <p>25 A. With respect to the statement in</p>
6351	<p>1 In the --</p> <p>2 A. I --</p> <p>3 Q. Pardon me.</p> <p>4 A. Let me just finish my sentence for the</p> <p>5 record.</p> <p>6 I was going to say, otherwise, I have</p> <p>7 not done my own separate, independent empirical</p> <p>8 study.</p> <p>9 Q. Thank you.</p> <p>10 You nevertheless state in Paragraph 66</p> <p>11 that you are, quote, "unconvinced," unquote, by</p> <p>12 Professor Shapiro's own conclusions as to both</p> <p>13 Pandora's relative elasticity of demand for the</p> <p>14 catalogs of the majors versus the Indies; or</p> <p>15 secondly, the promotional effect of Pandora on</p> <p>16 majors versus Indies; is that correct?</p> <p>17 A. I'm just having trouble finding the</p> <p>18 quote you're -- from --</p> <p>19 Q. The only quote I made -- intended to</p> <p>20 make was the word "unconvinced" --</p> <p>21 A. But would you mind --</p> <p>22 Q. -- as to those analyses.</p> <p>23 A. -- repeating your --</p> <p>24 Q. Yes. Sure.</p> <p>25 So in Paragraph 66, I take it, you</p>	6353	<p>1 Paragraph 66.</p> <p>2 Q. Yes.</p> <p>3 A. Give me just a minute.</p> <p>4 Well, I would only agree with your</p> <p>5 question in the narrow sense of talking -- if</p> <p>6 you're talking about empirical studies.</p> <p>7 But a lot of work I've done in this</p> <p>8 case, I think informs the question that's raised in</p> <p>9 Paragraph 66. So I wouldn't want to say I haven't</p> <p>10 done any analysis.</p> <p>11 But I would agree that I can't -- I</p> <p>12 don't believe I've put forth empirical studies that</p> <p>13 would respond directly to this.</p> <p>14 Q. All right. Thank you.</p> <p>15 A. It's a much narrower answer.</p> <p>16 Q. Thank you.</p> <p>17 At the bottom you've not analyzed</p> <p>18 whether the Merlin deal terms would be acceptable</p> <p>19 to a major, have you?</p> <p>20 A. It's a little hard for me to imagine a</p> <p>21 major accepting deal terms that have headline rates</p> <p>22 that are near the Pureplay rates. So I'm not sure</p> <p>23 what you mean by analyze.</p> <p>24 Q. Well, at your deposition you appeared</p> <p>25 not to have that difficulty. I'll read you from</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6354	<p>1 Line 15 at Page 379. You can see this at any time</p> <p>2 you like. One question, one answer.</p> <p>3 Question: "Have you performed any</p> <p>4 analysis whether the rates negotiated with Pandora</p> <p>5 by Merlin would have been acceptable to one or more</p> <p>6 majors?"</p> <p>7 Answer: "I have not."</p> <p>8 A. Yes. Because, again, I -- we have to</p> <p>9 just be clear about the use of the word "analysis."</p> <p>10 I keep -- when you use the term, I</p> <p>11 assume we're talk specifically about something</p> <p>12 empirical where I've study the details of the</p> <p>13 contract, tried to evaluate and so on. And in that</p> <p>14 sense, the answer is no.</p> <p>15 But as I said, it's hard to imagine</p> <p>16 that a major would accept Pureplay rate.</p> <p>17 Q. In fact, you conclude elsewhere in your</p> <p>18 rebuttal testimony that Merlin has attained similar</p> <p>19 rates to the majors in other direct license deals,</p> <p>20 correct?</p> <p>21 A. Where are you citing?</p> <p>22 Q. Well, it's all over the place. It's</p> <p>23 Paragraph 67, Paragraph 128, Paragraph 175 through</p> <p>24 176, probably other places.</p> <p>25 A. Well, the paragraphs may well differ</p>	6356	<p>1 services benchmark to justify not making a material</p> <p>2 adjustment to your benchmark analysis, which is</p> <p>3 based on transactions entered into by the majors</p> <p>4 with interactive services, in order to account for</p> <p>5 potential differences in the rates that might be</p> <p>6 obtained by Indies, correct?</p> <p>7 A. No. I think that is an inaccurate</p> <p>8 characterization of what I do. Because you're</p> <p>9 leaving out the fact that there are aspects of the</p> <p>10 deals that go beyond the negotiated rates.</p> <p>11 So unless you can show -- I don't know</p> <p>12 what specific sentence you're talking about. But</p> <p>13 once you account for all of the other goodies in --</p> <p>14 what I've sometimes called goodies in the deal or</p> <p>15 lack of goodies, the deals do sometimes look quite</p> <p>16 different.</p> <p>17 Q. And you attempted to quantify that</p> <p>18 difference, didn't you, in order to bolster the</p> <p>19 validity of your interactive services benchmark?</p> <p>20 A. I believe I put forward a number to</p> <p>21 give an idea of what difference it would make. But</p> <p>22 I -- it's a little hard for me to remember exactly</p> <p>23 which part of my testimony you're talking about.</p> <p>24 But I was never able to do an empirical</p> <p>25 analysis of the value of all these components. I</p>
6355	<p>1 because --</p> <p>2 Q. Please take a look --</p> <p>3 A. Please let me finish my sentence.</p> <p>4 And they may differ because, for</p> <p>5 example, in Paragraph 67, I'm talking about similar</p> <p>6 minimum play rates and share of revenues, but I'm</p> <p>7 not talking about experts that may be affiliated</p> <p>8 with the deals.</p> <p>9 And I -- in some of the other</p> <p>10 paragraphs, which I'd be happy to go through with</p> <p>11 you, I think I probably have somewhat different</p> <p>12 characterizations of the deals.</p> <p>13 So I can't agree with your statement</p> <p>14 the way you made it.</p> <p>15 Q. Turn to Paragraph 127, please. You</p> <p>16 there state, quote, "Another factor demonstrating</p> <p>17 competition in the interactive services market is</p> <p>18 that independent labels with substantially smaller</p> <p>19 catalogs than the majors have negotiated the same</p> <p>20 or similar rates with interactive streaming</p> <p>21 services," unquote.</p> <p>22 You believe that to be true, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And you use the evidence you marshalled</p> <p>25 with respect to supporting your interactive</p>	6357	<p>1 think I just put forward an assumption about what</p> <p>2 the value might be to illustrate a conclusion I</p> <p>3 reached.</p> <p>4 Q. Are you certain that you never did an</p> <p>5 empirical analysis of that topic?</p> <p>6 A. Depends on what you're talking about.</p> <p>7 What I'm remembering now is a point of which I</p> <p>8 attributed I think a 2 percent value to some of the</p> <p>9 extras.</p> <p>10 And if that's what you mean by</p> <p>11 "empirical analysis," then the answer might be yes.</p> <p>12 If you're thinking about something other than that,</p> <p>13 you'll have to refresh my memory.</p> <p>14 Q. And by 2 percent, what does that 2</p> <p>15 percent represent?</p> <p>16 A. I need to -- at this point, if we're</p> <p>17 going to go into detail, I really need to go back</p> <p>18 and refresh my memory as to where that occurs and</p> <p>19 what I said. I'm going now back to general</p> <p>20 recollections, and I haven't looked at this in a</p> <p>21 while, so...</p> <p>22 Q. You recall we covered this topic in</p> <p>23 your direct examination --</p> <p>24 A. This has all been --</p> <p>25 Q. -- some weeks ago --</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6358	6360
<p>1 A. Yeah.</p> <p>2 Q. -- your first examination some weeks</p> <p>3 ago?</p> <p>4 A. Yes. This has all been covered before.</p> <p>5 Q. I think the record will -- I don't want</p> <p>6 to burden the Court's time now to have you refresh</p> <p>7 yourself on your testimony, but I think the record</p> <p>8 will reflect the fact that you, in fact, made a 2</p> <p>9 percent adjustment to account for possible</p> <p>10 valuation differences between Indies and majors,</p> <p>11 correct?</p> <p>12 You did -- you did support that and</p> <p>13 propose that to the Court, correct?</p> <p>14 A. As I just told you, I did recall a 2</p> <p>15 percent adjustment. I was simply pointing out that</p> <p>16 that wasn't based on a sort of detailed analysis of</p> <p>17 the value of each of the components because I</p> <p>18 wasn't able to do that.</p> <p>19 Q. And for that reason, you termed it</p> <p>20 "conservative," as I recall, correct?</p> <p>21 A. I have no reason to dispute that, but I</p> <p>22 don't remember that.</p> <p>23 Q. Okay. Turning to Pandora as a uniquely</p> <p>24 situated entity, you claim at Paragraph 69 of your</p> <p>25 written rebuttal testimony that Pandora is in what</p>	<p>1 don't sitting here today. It's in his written</p> <p>2 direct testimony.</p> <p>3 A. I'm not recalling a discussion of</p> <p>4 monopsony power off the top of my head.</p> <p>5 Q. And you did not do any empirical work</p> <p>6 of your own in response to that or otherwise on the</p> <p>7 issue of potential monopsony power by Pandora,</p> <p>8 correct?</p> <p>9 A. I have not studied monopsony power.</p> <p>10 But I want to make it clear for the</p> <p>11 Court that there is a difference between having</p> <p>12 monopsony power and having bargaining power. You</p> <p>13 can have substantial bargaining power but yet not</p> <p>14 have monopsony power.</p> <p>15 Q. But you agree with Professor Shapiro,</p> <p>16 at least with the concept of monopsony power, that</p> <p>17 Pandora does not have monopsony power as a buyer of</p> <p>18 rights to perform recorded music, correct?</p> <p>19 A. I would have -- I'm not certain I would</p> <p>20 agree with that. I would have to take a little</p> <p>21 more time to think about that and go over what</p> <p>22 Professor Shapiro has written.</p> <p>23 Q. Take a look at --</p> <p>24 A. I don't think I've expressed an opinion</p> <p>25 about that either way.</p>
6359	6361
<p>1 you call a power position in the Webcasting</p> <p>2 industry, correct?</p> <p>3 A. Yes.</p> <p>4 Q. You're familiar with the term</p> <p>5 "monopsony power," correct?</p> <p>6 A. Yes.</p> <p>7 Q. Economists use that term to capture the</p> <p>8 same notion as monopoly power on the buyer side of</p> <p>9 the market rather than the seller side of the</p> <p>10 market, true?</p> <p>11 A. Well, generally true. But there are</p> <p>12 differences that make it not a perfect analogy.</p> <p>13 Q. In theory, a firm with monopsony power</p> <p>14 might pay a price below the competitive level for</p> <p>15 an input just like a firm with monopoly might</p> <p>16 charge a price above the competitive level for its</p> <p>17 output, correct?</p> <p>18 A. That's correct as a matter of theory,</p> <p>19 yes.</p> <p>20 Q. Okay. You're familiar with the</p> <p>21 empirical analysis that Professor Shapiro performed</p> <p>22 to establish that Pandora does not have monopsony</p> <p>23 power as a buyer of rights to recorded music?</p> <p>24 A. You'll have to refresh my memory.</p> <p>25 Q. Well, you either recall it, or you</p>	<p>1 Q. Take a look in your binder at your</p> <p>2 April 13th deposition transcript, please.</p> <p>3 JUDGE STRICKLER: What tab is that,</p> <p>4 please?</p> <p>5 MR. RICH: So this is labeled 4-13-15</p> <p>6 Rubinfeld in the binder. This is in the</p> <p>7 cross-examination binder.</p> <p>8 BY MR. RICH:</p> <p>9 Q. And turn to Page 391.</p> <p>10 A. Okay.</p> <p>11 Q. Beginning at line 9.</p> <p>12 Question: "I take it you're not</p> <p>13 arguing that Pandora exercised monopsony power in</p> <p>14 its dealings with Merlin, are you?"</p> <p>15 Answer: "I wouldn't be comfortable</p> <p>16 using the term "monopsony power" because that</p> <p>17 would -- in order to have monopsony power, you</p> <p>18 would have to have the ability to cut back on the</p> <p>19 amount that you're willing to purchase, if you</p> <p>20 will, in order to get a lower price. But I -- and</p> <p>21 I don't see any evidence of that. But I would say</p> <p>22 they have bargaining power with respect to Merlin</p> <p>23 because of their size."</p> <p>24 Do you see that?</p> <p>25 A. Yeah. That's exactly what I was trying</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6362	<p>1 to express before. It's very hard to evaluate the</p> <p>2 monopsony power issue. But I am convinced -- and</p> <p>3 so I'm not sure where I come down, but I am</p> <p>4 convinced that Pandora has some bargaining power</p> <p>5 because of its success in the marketplace.</p> <p>6 Q. You level certain criticisms of the</p> <p>7 steering experiments conducted by Dr. McBride at</p> <p>8 Professor Shapiro's request, correct?</p> <p>9 A. Yes.</p> <p>10 Q. For one, you suggest that the 13-week</p> <p>11 duration of the experiment may have been too short;</p> <p>12 that had the experiment run longer, it's likely</p> <p>13 that there would have been a steeper falloff in</p> <p>14 observed listenership, correct?</p> <p>15 That's at Paragraph 146 of your written</p> <p>16 rebuttal testimony.</p> <p>17 A. I'm pretty sure I said that, yes.</p> <p>18 Q. And as support for that inference, you</p> <p>19 created Exhibit 13-A to your written rebuttal</p> <p>20 testimony; is that correct?</p> <p>21 A. I don't remember the exhibit numbers</p> <p>22 supporting it, but I'll check. I don't --</p> <p>23 Q. It should be in your --</p> <p>24 A. -- want to --</p> <p>25 Q. It should be in your binder.</p>	6364	<p>1 that, quote, "the loss of listenership tends to</p> <p>2 grow as the experiments continue," unquote, over</p> <p>3 that 13-week span?</p> <p>4 Quoting from Paragraph 145.</p> <p>5 A. Yes.</p> <p>6 Q. And further in that same paragraph,</p> <p>7 that, quote, "The average effect over the entire</p> <p>8 13-week period of the experiment understates the</p> <p>9 effect during the later portion after listeners</p> <p>10 begin to detect the effects of the steering,"</p> <p>11 unquote; is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. Now, we've drawn a line down at week</p> <p>14 eight of that 13-week experiment and directed your</p> <p>15 eye to the demonstrative.</p> <p>16 Can you identify for me a single point</p> <p>17 on any of the colored graph lines representing</p> <p>18 overspins and underspins of the majors as depicted</p> <p>19 in which between week eight, which is 7-17-2014,</p> <p>20 and the final week, which is 8-28-2014 -- the last</p> <p>21 digit got cut off -- there is, as you assert,</p> <p>22 evidence of loss of listenership continuing to grow</p> <p>23 in the latter portion?</p> <p>24 A. So unless I'm misreading my own table,</p> <p>25 loss of listenership would grow in the negative --</p>
6363	<p>1 MR. RICH: Apologies, Your Honors.</p> <p>2 You've got to flip through a little bit of the blue</p> <p>3 tabs to get to it. Looks like this when you get</p> <p>4 there.</p> <p>5 This is in the cross-examination binder</p> <p>6 at the back end of this witness's written rebuttal</p> <p>7 testimony, SX 0029. And we've put it up on the</p> <p>8 screen as well with one slight emendation.</p> <p>9 THE WITNESS: All right. Counsel,</p> <p>10 would you just refresh my memory as to which</p> <p>11 paragraph we're talking about?</p> <p>12 BY MR. RICH:</p> <p>13 Q. Yes. Surely.</p> <p>14 This is -- Paragraph 145, 146 generally</p> <p>15 discuss this.</p> <p>16 A. Thank you.</p> <p>17 MR. RICH: For Your Honors' benefit,</p> <p>18 we've reproduced precisely Exhibit 13-A but with a</p> <p>19 dotted line, which, Counsel, we have inserted.</p> <p>20 This is exactly the demonstrative which my partner,</p> <p>21 Mr. Marks, used with Dr. McBride during his direct</p> <p>22 examination.</p> <p>23 BY MR. RICH:</p> <p>24 Q. Am I correct, Professor Rubinfeld, that</p> <p>25 Exhibit 13-A created by you purports to demonstrate</p>	6365	<p>1 the graph -- the lines that are negative tend to</p> <p>2 become more negative.</p> <p>3 So I'd be looking for downward sloping</p> <p>4 curves, and I see some. So, for example, the --</p> <p>5 let's just take the light green, which I see light</p> <p>6 green is UMG or the -- one of the -- oh, I see.</p> <p>7 Let's see. The dark -- dark blue.</p> <p>8 So the one that curves, I see they're</p> <p>9 going down are 30-week experiments.</p> <p>10 JUDGE STRICKLER: 30 week or 30 percent</p> <p>11 steering?</p> <p>12 THE WITNESS: Sorry. 30 percent</p> <p>13 steering. Thank you, Your Honor.</p> <p>14 BY MR. RICH:</p> <p>15 Q. Is that that bottom-most green line?</p> <p>16 A. Yes. So I'm just trying to read this</p> <p>17 correctly. I'm having a little trouble because</p> <p>18 it's either my eyes or the chart that it's very</p> <p>19 fussy. Bear with me.</p> <p>20 Ah, thanks. That's a lot clearer.</p> <p>21 So I'm not -- let's go back to your</p> <p>22 question. I wanted to distinguish my answer</p> <p>23 between the 30-week and 15-week experiments. And I</p> <p>24 didn't know whether your question was</p> <p>25 distinguishing those.</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6366	<p>1 But any curve that continues to fall, 2 if it's below -- if it's below zero, would be a -- 3 one where the effect is -- steering is becoming 4 bigger. 5 Q. And how many of the other plotted lines 6 do you see with a falling curve from the point of 7 the dotted line to the end of the experiment? 8 A. Well, many of the curves are falling, 9 and then they go up again. So if you're asking me 10 whether they -- to compare where they begin at one 11 point and where they end, where they end is a 12 different question than the one you've asked 13 previously. 14 Q. Does any of these data points end in 15 week 13 at a point lower than depicted in week 16 five -- in week eight? Pardon me. 17 A. It looks -- yes. It does look to me 18 like the darker blue line, which I think is Sony, 19 ends up lower at the end. 20 Q. By about five-hundredths of a percent? 21 A. Yes. Something like that. 22 Q. What's -- 23 JUDGE STRICKLER: And just for 24 clarification for the record, that's Sony on a 30 25 percent steering.</p>	6368	<p>1 holding constant the average effective of the 2 listenership loss measured over the period of the 3 13-week experiment. 4 Have I got that right? 5 A. Well, this -- you're referring to the 6 discussion in Paragraph 146, I believe. 7 Q. Yes. 8 A. Give me just a minute. 9 Yes. I think your description was 10 accurate. 11 Q. And in Paragraphs 146 to 148, without 12 reading any numbers into the record, you report 13 that Pandora will be expected to lose considerable 14 millions of dollar in what you term, quote, "net 15 income," unquote, were it to pursue that commercial 16 course, correct, for a longer period of time? 17 A. Well, if I'm referring to the part I 18 think you're referring to, the -- which is 19 Paragraph 147, there I talked about what would -- 20 the effect would be at the maximum loss of 21 listenership during a 13-week period. 22 I have different calculation in 23 Paragraph 146. I'm not sure which one you're 24 referring to. 25 Q. Isn't it the case that what you were</p>
6367	<p>1 THE WITNESS: Yes. 2 JUDGE STRICKLER: Thank you. 3 BY MR. RICH: 4 Q. And what is the Y axis range from top 5 to bottom? What is it showing in terms of 6 percentage increase or decrease from -- what is the 7 scale? 8 A. The scale is in -- well, it ranges from 9 a high of plus .3 percent to a low of minus .7 10 percent. 11 Q. Total span of 1 percent? 12 A. Yes. That's right. 13 MR. RICH: You can take that down. 14 Thank you. 15 BY MR. RICH: 16 Q. Now, you also assert, beginning at 17 Paragraph 144 of your written rebuttal testimony, 18 that the reported loss of listenership as a result 19 of the steering experiments would, if continued, 20 likely have what you term a nontrivial cost to 21 Pandora, correct? 22 A. Yes. 23 Q. And to demonstrate that proposition, 24 you calculate the anticipated financial impact were 25 Pandora to continue to steer for a one-year period</p>	6369	<p>1 attempting to establish and then depict in your 2 Exhibit 13-B -- we just looked at 13-A -- in your 3 13-B was that, had these steering experiments been 4 continued, and had one observed the rate of decline 5 in listenership that was observed during the 13 6 weeks, it would end up being costly proposition for 7 Pandora? 8 Isn't that what you were attempting to 9 establish? 10 A. Yes. That's generally true. 11 Q. Okay. Now, in performing that 12 analysis, you simply looked at the revenue side of 13 the equation, isn't that true, in terms of impact 14 on Pandora? 15 A. Yes. I -- by reference, I -- I would 16 say I just looked at the cost. I did not try to 17 evaluate -- to do a full benefit cost analysis. 18 That's correct. 19 Q. Right. 20 But you nevertheless estimated -- what 21 you did -- tell me if I'm wrong -- as depicted in 22 13-B, you estimated the impact on Pandora's 23 revenues based on assumed loss of listenership and 24 then calculated what you term a, quote, "annual 25 revenue loss restated as a percentage of annual</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6370	<p>1 income," unquote, by dividing the revenue loss you</p> <p>2 calculated by Pandora's third quarter 2014 reported</p> <p>3 quarterly nonGAAP net income, correct?</p> <p>4 A. I mean I don't remember the</p> <p>5 specifics -- I have to go -- of exactly the</p> <p>6 calculation.</p> <p>7 Q. You can look at 13-B if it will help</p> <p>8 you.</p> <p>9 A. I will take a look.</p> <p>10 So yes. I took the nonGAAP net income</p> <p>11 for one quarter of 2014, turned it into an annual</p> <p>12 number so I had an annual income number. And I</p> <p>13 took my estimated revenue loss as a percentage of</p> <p>14 that annual number.</p> <p>15 Q. Now, in performing your calculation,</p> <p>16 you simply assumed, notwithstanding active steering</p> <p>17 of plays on Pandora's part, that the royalty rates</p> <p>18 Pandora pays would remain unchanged from the</p> <p>19 present circumstance, correct?</p> <p>20 JUDGE STRICKLER: You mean royalty</p> <p>21 rates in that question or royalty revenues?</p> <p>22 MR. RICH: Royalty rates.</p> <p>23 THE WITNESS: You're correct. I did</p> <p>24 not make any change in the royalty rates.</p> <p>25 BY MR. RICH:</p>	6372	<p>1 stated the question.</p> <p>2 Q. You state in Paragraph 4 of your</p> <p>3 written rebuttal testimony -- strike that. Last</p> <p>4 questions.</p> <p>5 In your Paragraph 77(c) to your written</p> <p>6 rebuttal testimony, you criticize Professor</p> <p>7 Shapiro's treatment of the skips and performances</p> <p>8 of pre-1972 sound recordings called for by the</p> <p>9 Merlin agreement and purport to correct his</p> <p>10 analysis in your own Exhibit 9, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Now, at your deposition, on questioning</p> <p>13 about that, you said you wanted to reconsider that</p> <p>14 aspect of your testimony because you might have</p> <p>15 misinterpreted what Professor Shapiro had done.</p> <p>16 Do you recall that?</p> <p>17 A. Vaguely, yes.</p> <p>18 Q. Have you done -- have you undertaken</p> <p>19 such a reconsideration?</p> <p>20 A. No, I don't believe I did. I don't</p> <p>21 recall any specific readjustments that I made.</p> <p>22 Q. In fact, it's your own computation</p> <p>23 that's in error, isn't it?</p> <p>24 A. Not that I'm aware of.</p> <p>25 Q. Weren't you adjusting for what the</p>
6371	<p>1 Q. And so unlike Professor Shapiro, who --</p> <p>2 in his Appendix F, Tables F2 and F3 to his written</p> <p>3 direct testimony, who explicitly accounts for both</p> <p>4 potential revenue falloff and offsetting savings in</p> <p>5 royalty payments, you simply ignored the royalty</p> <p>6 payment side of that equation, correct?</p> <p>7 A. I don't think "ignored" would be the</p> <p>8 right word, but I --</p> <p>9 Q. You made no adjustment for.</p> <p>10 A. There -- I had some questions as to</p> <p>11 whether one should make an adjustment. But I --</p> <p>12 you're correct is that I did not make such an</p> <p>13 adjustment.</p> <p>14 If you want to discuss Professor</p> <p>15 Shapiro's tables, I'd be happy to discuss that as</p> <p>16 well. But I was not convinced it was appropriate</p> <p>17 to make an adjustment.</p> <p>18 Q. So the net effect of your analysis, as</p> <p>19 depicted in 13-B, is to establish the proposition</p> <p>20 that, assuming Pandora were to steer the majors'</p> <p>21 repertoires at rates reported by the steering</p> <p>22 experiments, and however improbably fail to use</p> <p>23 that steering ability to attain royalty savings, it</p> <p>24 likely would sustain reduced income, correct?</p> <p>25 A. No. I don't agree with the way you</p>	6373	<p>1 actual value of the Merlin-Pandora agreement was in</p> <p>2 place of what Professor Shapiro does, which is to</p> <p>3 calculate -- to make adjustments so that an</p> <p>4 effective statutory rate would be computed by</p> <p>5 taking 372 performances out and adding skips back</p> <p>6 in?</p> <p>7 And don't you do the opposite?</p> <p>8 A. I would have to go back and look at it.</p> <p>9 I do agree that it would be appropriate to try to</p> <p>10 mirror what the statute -- statutory requirement</p> <p>11 would be.</p> <p>12 But I don't recall -- I'd have to go</p> <p>13 back and look at my calculations to see exactly</p> <p>14 what I did.</p> <p>15 MR. RICH: Which is what you indicated</p> <p>16 you would do at the time of your deposition.</p> <p>17 I have no further questions.</p> <p>18 JUDGE STRICKLER: Question for you,</p> <p>19 Professor Rubinfeld.</p> <p>20 Exhibit 13-B is your calculations of</p> <p>21 the cost of steering away from the majors at 30</p> <p>22 percent.</p> <p>23 Is there a similar exhibit in your</p> <p>24 testimony regarding the steering away from the</p> <p>25 majors at 13 percent? Excuse me. At 15 percent.</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6374	<p>1 I'm sorry.</p> <p>2 THE WITNESS: I don't believe there is.</p> <p>3 I'm sure I looked at the calculation, but I don't</p> <p>4 think I produced a separate exhibit.</p> <p>5 JUDGE STRICKLER: Another question for</p> <p>6 you on an earlier topic that you've mentioned --</p> <p>7 that you've discussed before in your answers.</p> <p>8 You distinguish between bargaining</p> <p>9 power on the one hand and monopoly or monopsony</p> <p>10 power on the other.</p> <p>11 Can you explain what you mean by the</p> <p>12 difference between those?</p> <p>13 THE WITNESS: Yes. So monopsony</p> <p>14 power -- this is actually in Chapter 10 of my</p> <p>15 textbook.</p> <p>16 Monopsony power arises because you</p> <p>17 actually cut back the amount you purchase and pay a</p> <p>18 lower price. So you actually have some power over</p> <p>19 price.</p> <p>20 Bargaining power is really more about</p> <p>21 dividing the pie. So you can have bargaining power</p> <p>22 in which you get a bigger piece of any surplus</p> <p>23 you're negotiating over but not actually have the</p> <p>24 power to control the price directly.</p> <p>25 JUDGE STRICKLER: In bargaining -- the</p>	6376	<p>1 to repetition.</p> <p>2 So we'll be at recess until 12:55.</p> <p>3 (A short recess was taken.)</p> <p>4 CHIEF JUDGE BARNETT: Please be seated.</p> <p>5 Ms. Hall, good afternoon.</p> <p>6 MS. HALL: Good afternoon.</p> <p>7 JUDGE STRICKLER: Are we going to need</p> <p>8 the other binder, the other cross-examination</p> <p>9 binder?</p> <p>10 MS. HALL: No, you will not. I have</p> <p>11 questions based on my direct examination binder.</p> <p>12 JUDGE STRICKLER: Thank you.</p> <p>13 CROSS-EXAMINATION BY COUNSEL FOR</p> <p>14 IHEARTMEDIA</p> <p>15 BY MS. HALL:</p> <p>16 Q. Good afternoon, Professor Rubinfeld.</p> <p>17 We have met before but my name is Caitlin Hall. I</p> <p>18 represent iHeartMedia.</p> <p>19 A. Nice to meet you again.</p> <p>20 Q. You, too.</p> <p>21 In your testimony, you analyzed the</p> <p>22 agreement between iHeartMedia and Warner and you</p> <p>23 derive a benchmark rate based on actual performance</p> <p>24 after the agreement, correct?</p> <p>25 A. Yes.</p> <p>Q. And in your written testimony, you</p>
6375	<p>1 elements of bargaining include a threat point, a</p> <p>2 point where you can walk away, correct?</p> <p>3 THE WITNESS: Yes.</p> <p>4 JUDGE STRICKLER: Does the existence of</p> <p>5 monopoly or monopsony power, depending on which</p> <p>6 side of the market you're on, affect your threat</p> <p>7 point?</p> <p>8 THE WITNESS: Yes. It definitely could</p> <p>9 affect your threat point.</p> <p>10 But -- and if you have monopsony power,</p> <p>11 you almost certainly are going to have bargaining</p> <p>12 power if you're in a bargaining situation.</p> <p>13 But it doesn't go the other way. You</p> <p>14 could have significant bargaining but still not</p> <p>15 have monopsony power.</p> <p>16 JUDGE STRICKLER: Thank you.</p> <p>17 MR. RICH: Thank you.</p> <p>18 MS. HALL: Good afternoon, Your Honor.</p> <p>19 I'm happy to begin my examination now.</p> <p>20 I note that it's noon. And I could come back and</p> <p>21 do it after the break if you'd prefer that. But</p> <p>22 I'm happy to do it now.</p> <p>23 CHIEF JUDGE BARNETT: It's almost noon.</p> <p>24 But let's take the break rather than have you have</p> <p>25 to stop and start. Because that would lend itself</p>	6377	<p>1 repeatedly characterized reliance on expectations</p> <p>2 in the actual performance as inappropriate,</p> <p>3 correct?</p> <p>4 A. I characterized the use of expectations</p> <p>5 by one side of -- by one party only as</p> <p>6 inappropriate. I don't think I say expectations</p> <p>7 generally are necessarily inappropriate.</p> <p>8 Q. Do you recall testifying that you</p> <p>9 believed that the appropriate approach in this case</p> <p>10 was to rely on performance data?</p> <p>11 A. With respect to the iHeartMedia-Warner</p> <p>12 deal, that is my view, yes.</p> <p>13 Q. Okay.</p> <p>14 A. But it is not a general view. I have a</p> <p>15 discussion in my testimony where I explain the</p> <p>16 tradeoff between looking at performance data and</p> <p>17 looking at expectations.</p> <p>18 Q. Are you aware that following the</p> <p>19 submission of your written rebuttal testimony,</p> <p>20 counsel for SoundExchange filed a motion to exclude</p> <p>21 the testimony of Professor Fischel on the</p> <p>22 iHeartMedia Warner agreement on the basis that it</p> <p>23 relied on expectations rather than performance?</p> <p>24 A. I actually don't recall that.</p> <p>25 Q. No? You are not aware that the sole</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6378	6380
<p>1 basis of that motion was your testimony saying that 2 it was inappropriate? 3 A. I don't remember that submission. They 4 didn't talk to me about it. At least, if they did, 5 I don't recall it. 6 Q. Would a submission along those lines 7 have been justified from an economic perspective in 8 your opinion? 9 A. If the submissions said it is 10 inappropriate to rely on testimony based on simply 11 one side's view of the expectations, I would be 12 supportive of that submission. 13 Q. I'm going to ask you to turn to Tab 1 14 of the binder in front of you, which is 15 SoundExchange Exhibit 29. 16 Do you recognize this as your written 17 rebuttal testimony? 18 A. I do. 19 Q. Can you please turn to the page labeled 20 SX-29-10. 21 A. I'm there. 22 Q. Do you see the Header 2, quote: 23 "Professors Fischel and Lichtman inappropriately 24 rely on projections associated with the 25 iHeartMedia" --</p>	<p>1 this as the final order in the Web I proceeding? 2 A. Yes, I do. 3 Q. So turning to that page, again ending 4 in 255, you see Section 8, methodology for 5 calculating the statutory rates for the Webcasting 6 license? 7 A. I see that, yes. 8 Q. And in the first paragraph beginning 9 about halfway down, do you see the language, quote: 10 "To calculate this unitary rate, it is necessary to 11 determine what Yahoo paid for the initial 1.5 12 billion performances based on the lump sum payment 13 and what it expected to pay for transmissions after 14 that time." 15 A. I do see that. 16 Q. Then continuing toward the middle of 17 the following paragraph, do you see the language, 18 quote: "This is a simple arithmetic calculation 19 and one that Yahoo had already performed in order 20 to gauge the actual cost of the performances under 21 the differentiated rate structure. This 22 calculation yields an effective or blended rate of 23 .065 cents per performance based upon Yahoo's 24 expectation that 90 percent of its transmissions 25 will continue to be radio retransmissions with the</p>
6379	6381
<p>1 CHIEF JUDGE BARNETT: You have to read 2 more slowly. 3 BY MS. HALL: 4 Q. Quote: "Professors Fischel and 5 Lichtman inappropriately rely on projections 6 associated with the iHeartMedia Warner agreement 7 rather than its performance." 8 A. Yes. 9 Q. Now, when you were here before, you 10 testified that you had reviewed the prior orders in 11 prior Webcasting proceedings, correct? 12 A. Yes. 13 Q. So you are aware that in Web I, the 14 Librarian of Congress indicated that the parties' 15 expectations at the time of the agreement were what 16 were relevant in determining a benchmark rate in 17 the agreement? 18 A. I actually don't recall that either 19 way. You'd have to refresh my memory. 20 MS. HALL: Can we circulate the -- 21 thank you, federal reporter. 22 BY MS. HALL: 23 Q. And Dr. Rubinfeld, I'm going to be 24 asking you questions about the page labeled 45255. 25 First, let me ask: Do you recognize</p>	<p>1 remaining ten percent being Internet-only 2 transmissions." 3 A. You read that correctly. 4 Q. Thank you. 5 And you have testified as an expert in 6 previous cases in which you have been asked to 7 apply a willing buyer/willing seller standard to 8 determine royalty rates for intellectual property, 9 correct? 10 A. Well, I've definitely testified in 11 prior cases evaluating intellectual property. I'm 12 not sure it would be fair to characterize it as 13 applying a willing buyer/willing seller standard. 14 MS. HALL: May I please distribute 15 this? Thank you. 16 BY MS. HALL: 17 Q. Professor, do you recognize this as 18 your expert report in the University of Colorado 19 Foundation versus American Cyanamid? 20 A. It certainly looks like it. I'm just 21 curious if I could ask, I thought that part of this 22 was sealed. 23 Q. This part is not sealed. This was 24 obtained on the public docket. 25 A. Thank you.</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6382	<p>1 Q. And do you recall testifying in this</p> <p>2 case that the relevant question when applying a</p> <p>3 willing buyer/willing seller standard is what the</p> <p>4 buyer in a negotiation for an intellectual property</p> <p>5 license would agree to pay and what the seller</p> <p>6 would agree to accept?</p> <p>7 A. I may well have said it, but it has</p> <p>8 been a long time, so I'm sure you will point me out</p> <p>9 to the language. I don't recall the specific</p> <p>10 language.</p> <p>11 Q. Let me ask you to turn to Page 9 of</p> <p>12 this printout.</p> <p>13 And two paragraphs above the section</p> <p>14 that starts: "B, university licensing policy."</p> <p>15 Do you recall giving the following</p> <p>16 expert opinion, quote: "The amount that a licensor</p> <p>17 such as the patentee and the licensee such as the</p> <p>18 infringer would have agreed upon at the time</p> <p>19 infringement began, if both had been reasonably and</p> <p>20 voluntarily trying to reach an agreement, that is,</p> <p>21 the amount of which a prudent licensee," there's a</p> <p>22 parenthetical and it continues: "Would have been</p> <p>23 willing to pay as a royalty and yet be able to make</p> <p>24 a reasonable profit and which amount would have</p> <p>25 been acceptable by a prudent patentee who is</p>	6384	<p>1 the sort of evidence on which economic experts</p> <p>2 reasonably rely in forming their opinions and I do</p> <p>3 so in putting forward my damage analysis."</p> <p>4 JUDGE STRICKLER: I am missing where</p> <p>5 you are. Page 11?</p> <p>6 MS. HALL: I'm sorry. Yes, Page 11,</p> <p>7 the second paragraph under Section E.</p> <p>8 THE WITNESS: Yeah. So just -- again,</p> <p>9 just to make the record clear, Mr. Damson did not</p> <p>10 testify at the trial, I testified. He was a prior</p> <p>11 expert. I actually had some disagreements with the</p> <p>12 expert who did the reasonable royalty calculations</p> <p>13 in the trial you are referring to.</p> <p>14 BY MS. HALL:</p> <p>15 Q. You did though rely --</p> <p>16 A. No, I did cite -- just to help you out.</p> <p>17 I guess I was citing Mr. Damson's testimony as</p> <p>18 something I felt uncomfortable relying on, that's</p> <p>19 correct.</p> <p>20 MS. HALL: Do you have a copy of that?</p> <p>21 Thank you.</p> <p>22 BY MS. HALL:</p> <p>23 Q. Do you recognize this as the portion of</p> <p>24 Mr. Damson's testimony to which you referred in</p> <p>25 your report?</p>
6383	<p>1 willing to grant a license. This willing</p> <p>2 licensor/willing licensee approach comports with</p> <p>3 the economic concept of an arm's length</p> <p>4 negotiation."</p> <p>5 A. So that is what I said. I just want to</p> <p>6 add for the record in case you don't go there, that</p> <p>7 my primary responsibility in this case was the</p> <p>8 determination of measurement of unjust enrichment,</p> <p>9 and not a royalty rate, so I did comment about the</p> <p>10 royalty issue in my testimony but that was not the</p> <p>11 primary focus of my testimony.</p> <p>12 Q. Do you recall that in commenting on</p> <p>13 this issue, you adopted the opinion of another</p> <p>14 expert who had testified in the case?</p> <p>15 A. No, I don't recall that. I actually</p> <p>16 disagreed with my -- the expert on my side of the</p> <p>17 case.</p> <p>18 Q. Let me ask you to turn to Section E,</p> <p>19 which is two pages further.</p> <p>20 JUDGE STRICKLER: Page 11?</p> <p>21 MS. HALL: Yes. Page 11.</p> <p>22 BY MS. HALL:</p> <p>23 Q. And in the second paragraph under</p> <p>24 Section E, you say of a Mr. Damson, quote:</p> <p>25 "Whether or not his testimony is admitted, it is</p>	6385	<p>1 A. I don't recognize it. It has been</p> <p>2 quite a few years, but I am willing to accept your</p> <p>3 characterization on the reasons we disagree. It</p> <p>4 has been 20 years, I think, since I testified in</p> <p>5 this case.</p> <p>6 So I actually do not recognize it but I</p> <p>7 do know I looked at Mr. Damson's work so I presume</p> <p>8 this is what is relevant.</p> <p>9 Q. Do you recall specifically relying on</p> <p>10 the opinion by Mr. Damson that in approaching the</p> <p>11 issue of an appropriate royalty rate in this case,</p> <p>12 the question is what rate it would have been</p> <p>13 reasonable to expect in 1981 if negotiations for</p> <p>14 the rates had been held?</p> <p>15 A. I just didn't hear you, Counsel.</p> <p>16 Q. If you want, you can just turn to the</p> <p>17 language which is the second page, second</p> <p>18 paragraph.</p> <p>19 Mr. Damson gives the opinion, quote:</p> <p>20 "I have approached the issue of an appropriate</p> <p>21 royalty rate in this case from the following</p> <p>22 direction: What rate would have been reasonable to</p> <p>23 expect in 1981 if competitive negotiations for</p> <p>24 rates in the Colorado patent had been held."</p> <p>25 A. Sure. I mean, that is consistent with</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6386	<p>1 my understanding that in the typical patent case, 2 one is asked to measure damages by what would have 3 happened in a hypothetical negotiation at the time 4 of first infringement. 5 Q. And leaving aside Mr. Damson's 6 testimony, you agree that your testimony in this 7 case was that the relevant question in applying the 8 willing buyer/willing seller standard was the rate 9 to which a willing buyer and willing seller would 10 have agreed, correct? 11 A. Well, it's -- essentially, it's that, 12 but I would just refer back to the paragraph you 13 read into the record previously. 14 Q. The record is what it is. 15 Do you recall testifying in your 16 deposition in this case that looking at post-deal 17 performance cannot tell you what a buyer was 18 willing to pay or a seller was willing to accept 19 for a licensed performance sound recording. 20 A. I may well have said that. I just 21 don't recall it. I'm sure you will remind me. I 22 certainly think it's something I might have said. 23 Q. And just to be clear, you understand 24 that to be the statutory standard here, correct? 25 A. Just to be clear what? Are you saying</p>	6388	<p>1 expectations, the third might be actual 2 performance. 3 Among those three categories or -- how 4 do you rank those from best to worse among those 5 three alternatives? 6 THE WITNESS: Well, worse would be 7 looking at only one side's point of view. With 8 respect to looking -- if you had both sides' point 9 of view versus actual performance, I think that 10 would be something you'd have to think about more 11 deeply. In this particular case, I would feel more 12 comfortable relying on actual performance because I 13 have looked at materials that describe the parties' 14 expectations -- from both sides parties' 15 expectations, and it is very hard from looking at 16 those documents to draw clear inferences about what 17 their willingness to pay and willingness to accept 18 would be. 19 JUDGE STRICKLER: Do I understand your 20 testimony to be then that you don't know whether it 21 is a better approach to look at actual performance 22 or on the other hand, both parties' projections, 23 unless you -- unless clarity of the parties' 24 respective projections is sufficiently clear? 25 THE WITNESS: Essentially, yes. I</p>
6387	<p>1 I believe it's a statutory standard, what a willing 2 buyer and willing seller would be willing to -- 3 Q. Agree to? 4 A. -- agree to? Potentially -- yes, I 5 think it's a willing buyer/willing seller standard, 6 yes. 7 Q. Okay, great. 8 JUDGE STRICKLER: Before you go, 9 apropos to this and going back a couple of 10 questions, I think she referenced you to the 11 section of your written rebuttal testimony that 12 includes Paragraph 26 on Page 6. 13 THE WITNESS: Yes. 14 JUDGE STRICKLER: And you make mention 15 of the value or lack thereof of relying on one 16 party's subjective expectations, and then you refer 17 to your analysis of the iHeartMedia-Warner 18 agreement which was based on actual performance, 19 which you say, quote: "I believe is the better 20 approach," close quote. 21 The word "better" is a little ambiguous 22 to me here because it sounds like we are discussing 23 three possible approaches. One is reliance on one 24 party's subjective expectations. The other might 25 be relying on both parties' subjective</p>	6389	<p>1 think you have to decide them on a case-by-case 2 basis, but I would just add further that from my 3 point of view, focusing on the negotiations over a 4 noninteractive agreement itself is questionable 5 because of the problem with the shadow of the 6 statutory license, which makes it difficult to 7 interpret what people are saying about willingness 8 to pay and willingness to accept, so for reasons 9 you've heard many times, I would prefer to focus on 10 the approach I used which is focused on interactive 11 agreements. 12 But just again, to sum up, I actually 13 do not have an absolute view they should always 14 look at performance. I think you have to decide on 15 a case-by-case basis, but I am very troubled with 16 -- about looking at only one side, one side's view. 17 JUDGE STRICKLER: Thank you. 18 BY MS. HALL: 19 Q. Professor Rubinfeld, I want to return 20 to the question I was asking you about comparing 21 actual performance to what the parties would have 22 agreed to. 23 Let me ask you to turn to Tab 2 of your 24 binder, which is SoundExchange Exhibit 192. 25 Do you recognize this as a transcript</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6390	<p>1 of your deposition from April 13 and 14 of this 2 year? 3 A. Yes. 4 Q. And let me ask you to turn to Page 859. 5 JUDGE STRICKLER: Is that a transcript 6 page? 7 MS. HALL: It's a transcript page. The 8 transcript page numbers are -- so the bottom label 9 is SX-192-579. 10 THE WITNESS: Okay, I have it. 11 BY MS. HALL: 12 Q. And beginning at Line 22, do you recall 13 being asked the following questions and giving the 14 following answers? 15 Question: "Okay. So your testimony is 16 that Apple agreed to pay for this period of time 17 more than two and a half times the amount of money 18 that it received on a pro rata basis to Warner, 19 correct?" 20 Answer: "No, no, not at all." 21 Question: "In what manner is that 22 incorrect?" 23 Answer: "Well, Apple didn't agree that 24 these would be the final numbers. Apple agreed to 25 reach an agreement which presumably was based on a</p>	6392	<p>1 Beginning at Line 7, do you recall 2 being asked the following question and giving the 3 following answer? 4 Question: "So why would Apple agree in 5 your view to pay .36 for a service that I could 6 have paid under the statutory license only .23 7 for?" 8 Answer: "Well, I'm not" -- then there 9 is a parenthetical and it continues: "I would 10 doubt that Apple would be very happy about paying 11 .3, .36. The .36 result comes from amortizing a 12 fixed fee over a number of actual plays that was -- 13 I'm sure from Apple's point of view, disappointing. 14 And Apple -- Apple, I'm pretty sure, had in mind a 15 lot more plays which would have had a lower 16 effective rate." 17 A. I recall. 18 MR. POMERANTZ: Your Honor, objection. 19 If they were going to read into the record, I would 20 ask that the entire answer be read. She left out 21 the portion dealing with the percentage of revenue. 22 CHIEF JUDGE BARNETT: Go ahead, Ms. 23 Hall, read the entire answer, please. 24 MS. HALL: Sure, of course. 25 BY MS. HALL:</p>
6391	<p>1 more optimistic view of its success of its radio 2 service, but to say that Apple agreed that this is 3 how things would end up, I would absolutely 4 disagree with that." 5 A. I do see that, yes. 6 Q. And let me ask you to turn to Page 714 7 of the transcript. 8 MR. POMERANTZ: Objection, Your Honor. 9 This is not proper examination to just read 10 deposition testimony into the record. She can ask 11 a question to the witness and if he says something 12 different, she can then impeach him with or refresh 13 his recollection, but just reading deposition 14 testimony into the record is inappropriate. 15 MS. HALL: Your Honor, I asked Mr. 16 Rubinfeld if he recalled testifying to this. He 17 said he did not, and then I could refresh his 18 recollection. 19 CHIEF JUDGE BARNETT: That is correct. 20 Overruled. 21 MR. POMERANTZ: It's a rather broad 22 question, but okay. 23 BY MS. HALL: 24 Q. Turn to Page 715 of the transcript 25 which is labeled SX-192-435.</p>	6393	<p>1 Q. So the answer, beginning on Line 11 2 was: "Well, I'm not -- first of all, we have to 3 understand that there is also a percentage of 4 revenue problem which complicates this, but I -- I 5 would doubt that Apple would be very happy about 6 paying point .3, .36. The .36 result comes from 7 amortizing a fixed fee over a number of actual 8 plays that was -- I'm sure from Apple's point of 9 view, disappointing." 10 Professor Rubinfeld, you had access to 11 both iHeart and Warner's expectations at the time 12 you entered your written rebuttal report, correct? 13 A. I either had the materials or I could 14 have had access, yes. 15 Q. Do you recall that you cited the 16 Today's Growth Model on which Professor Fischel 17 relies repeatedly in your rebuttal report? 18 A. Yes. 19 Q. And you devote many paragraphs of your 20 report to critiquing those expectations, correct? 21 A. I just -- critiquing -- 22 Q. Critiquing those expectations? 23 A. Well, critiquing the implications of 24 that particular model, yes. 25 Q. And you say that Professor Fischel does</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6394	<p>1 not adequately explain why he used the Today's 2 Growth scenario, correct? 3 A. That sounds like something I would say, 4 yes. 5 Q. Do you acknowledge, though, that 6 Professor Fischel said that the model was, quote: 7 "Considered the most likely outcome by iHeartMedia 8 and was relied upon by iHeartMedia's board of 9 directors?" 10 A. What I recall actually is that the 11 actual board of directors -- the numbers that the 12 board of directors used I don't think was literally 13 the numbers from that model. It doesn't mean that 14 I didn't say exactly what you said, but I think 15 there was a distinction between that model and what 16 actually appeared in the board of directors deck. 17 Q. Does that appear anywhere in your 18 report? 19 A. Does what I just said? 20 Q. Yes. 21 A. I don't recall whether I said that or 22 not. I would have to go back and look. 23 Q. Do you recall that your stated reasons 24 for failing to credit Professor Fischel's testimony 25 in this issue was, quote: "That neither</p>	6396	<p>1 that is correct. 2 I mean, I was just trying to check to 3 see whether my memory was correct that there was 4 some distinction between that model and what the 5 board actually relied on. 6 Q. Please do. 7 A. Just give me just a second. 8 But I don't think -- maybe it doesn't 9 matter because I don't think that affects the 10 conclusion -- the answers I gave to the prior 11 questions, so... 12 Q. Okay. So I'm happy with that answer. 13 Are you aware of the fact that an 14 iHeart fact witness in this proceeding has given 15 sworn testimony that the Today's Growth Model on 16 which Professor Fischel relied on was the version 17 that the board relied upon? 18 A. I have not seen or read any of the 19 actual fact witness testimony, so the only thing I 20 could recall would be written submissions. 21 Q. I am talking about a written 22 submission. 23 A. I don't recall specific testimony. I 24 just recall the characterization of this particular 25 model by Professor Fischel and he described it as,</p>
6395	<p>1 justification was sufficient," returning to the 2 actual page of your report? 3 A. You are giving me something so out of 4 context, I can't tell whether I did or not. 5 Q. Turn to Paragraph 33 of your report 6 which is Tab 1 and again is SoundExchange Exhibit 7 29. 8 A. Go ahead. 9 Q. Do you see in Paragraph 33, you say: 10 "Professors Fischel and Lichtman do not adequately 11 explain why they determined that only one of these 12 six scenarios was considered," beginning at the top 13 of the next page, quote: "They state that they 14 focused on these projections because they were 15 'considered the most likely outcome' by iHeartMedia 16 and were 'relied upon by iHeartMedia's board of 17 directors.' Neither justification is compelling." 18 A. That's what I said, yes. 19 Q. So your reason for failing to credit 20 their testimony has nothing to do with your 21 assertion here today that you believe there is a 22 difference between the numbers that they relied 23 upon and the numbers in the growth model, correct? 24 A. I don't think there is anything I have 25 said today that is based on that point. I think</p>	6397	<p>1 considered the most likely outcome, but I don't 2 recall specific fact witness testimony. You would 3 have to show that to me. 4 Q. Were you given access to and did you 5 review the written testimony of Steven Cutler in 6 this proceeding? 7 A. Yes. 8 Q. You did, okay. Let me ask you then to 9 turn to Tab 4 of your binder, which is iHeartMedia 10 Exhibit 3346. 11 I will represent to you, subject to 12 verification or objection by your counsel, that 13 this is Exhibit DD to Mr. Cutler's written 14 testimony. 15 I will ask you to turn to Page 9 of 13. 16 A. Okay. 17 Q. Do you see that this is the Today's 18 Growth case on which Professor Fischel relied? 19 A. Yeah, but I see the no growth case and 20 promoted growth case on other pages, so it is a 21 little hard to tell. I can't tell which one he is 22 relying on from what I have in the document. 23 Q. Okay. I take it that you were not 24 given access to and did not review Mr. Cutler's 25 deposition testimony on that topic?</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6398	6400
<p>1 A. I was given access to all the 2 deposition testimony. I just don't -- I didn't 3 read all the depositions, but -- and I don't recall 4 -- I just don't recall what Mr. Cutler said about 5 this particular issue but I certainly would have 6 had access to all this material. 7 Q. Let me ask you to assume, subject to 8 later testimony, that Mr. Cutler did testify that 9 this is the case on which the board relied. 10 Are you aware of any other evidence in 11 this case that would contradict that assertion? 12 A. So you are asking me, do I -- can I 13 cite you any evidence that the board relied on one 14 of the other five or six models? 15 Q. Do you have any reason to doubt the 16 sworn testimony of a fact witness as to what the 17 board relied upon? 18 A. Now you are asking me a different 19 question. 20 Q. Answer that question. 21 A. No, I would generally assume that the 22 witnesses -- all witnesses are giving honest 23 testimony. 24 Q. You also had access to Warner's 25 projections at the time you filed your written</p>	<p>1 A. Your question is did I see that 2 testimony? Is that your question? 3 Q. Yes. 4 A. Yes. 5 Q. And you cited it in your report, 6 correct? 7 A. Yes. 8 Q. And you understand that Mr. Wilcox 9 attached to that testimony a number of models 10 including one that he said illustrated Warner's 11 projections for the agreement, correct? 12 A. I believe that's correct, yes. 13 Q. You also cite a Warner deck which you 14 described as a board presentation as evidence of 15 what Warner believed going into the deal, correct? 16 A. Yes. 17 Q. In your written testimony, however, you 18 did not make any attempt to analyze iHeart and 19 Warner's expectations to derive a rate based on 20 those expectations, correct? 21 A. That's right. I didn't think that 22 looking at the expectations of a single, 23 individual, noninteractive deal would be the most 24 informative way to approach the issue, the primary 25 issues in this case.</p>
6399	6401
<p>1 rebuttal testimony, correct? 2 A. Yes. 3 Q. And in your report, you rely on, among 4 other things, the written testimony of Mr. Wilcox 5 as to Warner's assumptions going into the 6 agreement, correct? 7 A. Yes. 8 Q. And I assume that you reviewed Mr. 9 Wilcox's testimony prior to including that in your 10 report? 11 A. Yes. 12 Q. So you are aware that Mr. Wilcox 13 attaches several models to his testimony including 14 one that he says illustrates Warner's projections? 15 MR. POMERANTZ: Your Honor, if we could 16 just have some clarification here. Mr. Wilcox 17 submitted direct testimony and rebuttal testimony 18 on the iHeart-Warner deal, and I think what Ms. 19 Hall is asking about is Mr. -- Dr. Rubinfeld's 20 rebuttal testimony, and I want to make clear which 21 testimony Ms. Hall is referring to. 22 MS. HALL: Thank you. 23 BY MS. HALL: 24 Q. I am referring to Mr. Wilcox's rebuttal 25 testimony.</p>	<p>1 MS. HALL: Your Honor, I now need to 2 get into restricted information, so I'd ask that we 3 close the courtroom. 4 CHIEF JUDGE BARNETT: At this time, we 5 will close the hearing room to anyone who has not 6 signed a nondisclosure certificate in this 7 proceeding. 8 (THIS ENDS PUBLIC SESSION) 9 (RESTRICTED SESSION BOUND SEPARATELY) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6402	6487
<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 BY MR. JOSEPH: 2 Q. Professor Rubinfeld, let's start. In a 3 real world, do firms often bargain with imperfect 4 information? 5 A. They do. 6 Q. And the lack of perfect information can 7 lead to firms failing to reach what might otherwise 8 have been a mutually beneficial agreement, right? 9 A. That is certainly a possibility, yes. 10 Q. And you are familiar with the term 11 monopoly power, aren't you? 12 A. Yes. 13 Q. And you would say that a firm has 14 monopoly power if it has the ability to raise price 15 substantially above a competitive level and sustain 16 that supracompetitive price for a substantial 17 period of time, correct? 18 A. I not only would say that I believe I 19 have said that. 20 Q. Indeed, you have. 21 Do firms with monopoly power ever 22 bargain with their customers? 23 A. Yes. 24 Q. Do firms with monopoly power ever make 25 concessions or change their bargaining position in</p>
6486	6488
<p>1 (THIS BEGINS PUBLIC SESSION) 2 CHIEF JUDGE BARNETT: Mr. Joseph? 3 MR. JOSEPH: Thank you, Your Honor. 4 Given the hour, I will endeavor to be 5 brief, but I can't promise you five minutes right 6 now. 7 CHIEF JUDGE BARNETT: It's the thought 8 that counts at this point, Mr. Joseph. Thank you. 9 CROSS-EXAMINATION BY COUNSEL FOR 10 NAB 11 BY MR. JOSEPH: 12 Q. Good afternoon, Professor Rubinfeld. 13 A. Good afternoon. 14 Q. As you know, I'm Bruce Joseph, 15 representing NAB. 16 A. I do. I believe we have had a chance 17 to speak many times. 18 Q. Pleasure to see you again. 19 CHIEF JUDGE BARNETT: Mr. Joseph, is 20 this a closed session? 21 MR. JOSEPH: Oh, no, I'm sorry, Your 22 Honor, it is, I believe, absolutely open. 23 CHIEF JUDGE BARNETT: Wonderful. Then 24 let's open the doors. 25 MR. JOSEPH: And I would be delighted to have the reporter have them on the open record.</p>	<p>1 response to positions taken by buyers with which 2 they are dealing? 3 A. Yes. 4 Q. Now, Professor Rubinfeld, in your 5 response to the critique of your assumption about 6 the price royalty ratios of interactive and 7 noninteractive services this morning, I believe you 8 said, and let me know if I have got it wrong, that 9 the downstream elasticities of demand were 10 relatively similar for both interactive and 11 noninteractive services. Is that about right? 12 A. Yes. 13 Q. Did you perform any analysis to 14 quantify the downstream elasticity of demand for 15 interactive services? 16 A. I have not calculated an actual 17 elasticity. 18 Q. Did you perform any analysis to 19 quantify the downstream elasticity of demand for 20 noninteractive services? 21 A. I have not. By that you mean an actual 22 calculation, no, I have not done an actual 23 calculation. 24 Q. Now I believe and again, correct me if 25 I am wrong, that you referred to the Lerner</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6489	<p>1 condition and said that it says that the markup of</p> <p>2 -- let me try again.</p> <p>3 It says that the markup of price over</p> <p>4 cost is the inverse of the elasticity of demand for</p> <p>5 a particular product. Is that about what you said?</p> <p>6 A. I may well have said that. The Lerner</p> <p>7 condition is usually done as a markup as a</p> <p>8 percentage of price, as being equal to one over the</p> <p>9 elasticity of demand.</p> <p>10 Q. Now in that statement, you are</p> <p>11 referring to the elasticity of demand, the upstream</p> <p>12 elasticity of demand meaning the demand of the</p> <p>13 service for the license or the downstream</p> <p>14 elasticity of demand referring to the demand of</p> <p>15 individuals for the service?</p> <p>16 A. In the testimony I give today, I was</p> <p>17 talking about the downstream elasticity.</p> <p>18 Q. Just so the record is complete, did you</p> <p>19 perform any analysis to quantify the upstream</p> <p>20 elasticity of demand for sound recording</p> <p>21 performance licenses by interactive services?</p> <p>22 A. Nothing quantitative.</p> <p>23 Q. Did you perform any analysis to</p> <p>24 quantify the upstream elasticity of demand for</p> <p>25 sound recording performance licenses by</p>	6491	<p>1 probably focusing on algorithms, but I think my</p> <p>2 comment would be broader than that.</p> <p>3 Q. And it would include differences, for</p> <p>4 example, between on-demand services and custom</p> <p>5 radio services?</p> <p>6 A. Yes, I think it would.</p> <p>7 Q. And by business models, you were</p> <p>8 referring, among other things, to services with an</p> <p>9 emphasis on the subscription model and services</p> <p>10 with an emphasis on the ad-supported model, weren't</p> <p>11 you?</p> <p>12 A. Yes.</p> <p>13 Q. Now I believe you also said in</p> <p>14 discussing the ratio issue this morning with</p> <p>15 Mr. Pomerantz, that all of the inputs, other than</p> <p>16 recorded music for interactive and noninteractive</p> <p>17 services, are relatively modest in terms of</p> <p>18 variable costs. Is that roughly what you said?</p> <p>19 A. Yes.</p> <p>20 Q. Did you perform any analysis to</p> <p>21 quantify the variable costs of all of the inputs to</p> <p>22 an interactive service other than the recorded</p> <p>23 music?</p> <p>24 A. I didn't do any specific calculation.</p> <p>25 Again, in some -- in the process I have seen, I</p>
6490	<p>1 noninteractive services?</p> <p>2 A. Again, no quantitative estimate of the</p> <p>3 elasticity.</p> <p>4 Q. Now let me ask you to turn to Paragraph</p> <p>5 110 of your written direct testimony which -- and I</p> <p>6 am using it for convenience, because it has</p> <p>7 everything I need, the Weil Gotshal</p> <p>8 cross-examination binder which is the one you were</p> <p>9 given by Mr. Rich.</p> <p>10 It is Exhibit SX 17, the first tab.</p> <p>11 Let me ask you to turn to Paragraph 110.</p> <p>12 A. I have it.</p> <p>13 Q. Now in that paragraph, you said, I</p> <p>14 believe, that the services' elasticities of demand</p> <p>15 reflect the preferences of their listeners and that</p> <p>16 the differences in price elasticities will reflect</p> <p>17 differences in the technical features of the</p> <p>18 services, as well as their business models. Was</p> <p>19 that -- that is what you said, correct?</p> <p>20 A. Yes.</p> <p>21 Q. By technical features, you meant, among</p> <p>22 other things, differences among custom radio,</p> <p>23 simulcasting and on-demand services, right?</p> <p>24 A. That would have included -- I think</p> <p>25 when I talked about technical features, I was</p>	6492	<p>1 think, some P&L statements that gave me an idea</p> <p>2 what the costs were like but I didn't do any</p> <p>3 specific calculation.</p> <p>4 Q. Same question with respect to</p> <p>5 noninteractive services.</p> <p>6 A. My answer would be the same.</p> <p>7 Q. By the way, isn't it true that revenues</p> <p>8 underlie a service's elasticity of demand only if</p> <p>9 the demand elasticity is driven by the possibility</p> <p>10 of shutdown?</p> <p>11 A. Your question is not at all clear to</p> <p>12 me. Can you try again?</p> <p>13 Q. I will withdraw it because I'm not sure</p> <p>14 that it is entirely clear to me either.</p> <p>15 If Professor Katz were here --</p> <p>16 A. I was going to say if it goes to</p> <p>17 Professor Katz, we can ask him. I will talk to him</p> <p>18 about this when I see him back in our normal jobs.</p> <p>19 Q. Let me ask you to turn to Paragraph 226</p> <p>20 of your written rebuttal testimony.</p> <p>21 That is the second tab, excuse me, in</p> <p>22 the binder.</p> <p>23 A. 226?</p> <p>24 Q. 226.</p> <p>25 A. Okay. I have it.</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6493	<p>1 Q. And starting about the -- the final</p> <p>2 offer that was on the table was unreasonable, you</p> <p>3 have a sentence that says, among other things, the</p> <p>4 NAB could have adopted -- excuse me, could have</p> <p>5 opted to approach the individual labels and</p> <p>6 negotiate direct deals.</p> <p>7 Do you see that? Happy to read the</p> <p>8 whole thing, but it is already in the record.</p> <p>9 A. I see that.</p> <p>10 Q. Can you name a single direct deal</p> <p>11 between a record label and the simulcaster that had</p> <p>12 been negotiated as of February 15, 2009?</p> <p>13 A. I can -- certainly can name one, but it</p> <p>14 is not something I studied.</p> <p>15 Q. Does the date February 15, 2009 mean</p> <p>16 anything to you?</p> <p>17 A. That is very close to the date at which</p> <p>18 the prior web agreement went into place.</p> <p>19 Q. Can you name a single direct deal?</p> <p>20 A. Web III.</p> <p>21 Q. Which one?</p> <p>22 A. Sorry, I was referring to Web III.</p> <p>23 Q. Can you name a single direct deal</p> <p>24 between a record label and a Webcaster offering</p> <p>25 only statutory streaming services that had been</p>	6495	<p>1 So could you explain to me why -- if</p> <p>2 somebody said that if you have a 99 percent revenue</p> <p>3 share, that it would be less likely to be binding</p> <p>4 than if it was a one percent revenue share?</p> <p>5 That is, if you share one percent of</p> <p>6 the revenue versus 99, you decide whether it's</p> <p>7 greater than the per-play rate, is it more likely</p> <p>8 that it's going to be greater than the per-play</p> <p>9 rate if it's at, let's say, 55 percent than 25</p> <p>10 percent?</p> <p>11 MR. HANSEN: That's a leading question</p> <p>12 if I ever heard one.</p> <p>13 CHIEF JUDGE BARNETT: I'm going to</p> <p>14 allow it just to get it done.</p> <p>15 MR. POMERANTZ: Thank you, Your Honor.</p> <p>16 THE WITNESS: Well, I mean, it is not</p> <p>17 obvious which way it would turn out. It would</p> <p>18 depend on the particular circumstances.</p> <p>19 MR. POMERANTZ: We will save that one</p> <p>20 for the briefing. I have no further questions,</p> <p>21 Your Honor.</p> <p>22 CHIEF JUDGE BARNETT: Thank you.</p> <p>23 Judge Strickler?</p> <p>24 JUDGE STRICKLER: No.</p> <p>25 CHIEF JUDGE BARNETT: Judge Feder?</p>
6494	<p>1 negotiated as of February 15, 2009?</p> <p>2 A. No, but it's not something I have</p> <p>3 specifically studied.</p> <p>4 MR. JOSEPH: I have no further</p> <p>5 questions, Your Honor.</p> <p>6 CHIEF JUDGE BARNETT: Thank you.</p> <p>7 Mr. Malone has left us. Mr. Cunniff?</p> <p>8 MR. CUNNIFF: I have no questions, Your</p> <p>9 Honor.</p> <p>10 CHIEF JUDGE BARNETT: Okay. Redirect,</p> <p>11 Mr. Pomerantz.</p> <p>12 MR. POMERANTZ: Thank you.</p> <p>13 Your Honor, we have four witnesses who</p> <p>14 need to testify and get off by the end of the day</p> <p>15 tomorrow, so I'm going to try to be extremely brief</p> <p>16 and only follow up with one question, frankly</p> <p>17 because I didn't understand what Professor</p> <p>18 Rubinfeld and Judge Strickler were talking about,</p> <p>19 and they have economics degrees, and I don't.</p> <p>20 REDIRECT EXAMINATION BY COUNSEL FOR</p> <p>21 SOUNDEXCHANGE</p> <p>22 BY MR. POMERANTZ:</p> <p>23 Q. So let me ask this question: You both</p> <p>24 seem to be thinking that the higher the percentage</p> <p>25 of revenue, the less likely it would be binding,</p>	6496	<p>1 JUDGE FEDER: No.</p> <p>2 CHIEF JUDGE BARNETT: Professor</p> <p>3 Rubinstein, Rubinfeld, pardon me. Professor</p> <p>4 Rubinfeld, you may be excused. Thank you.</p> <p>5 THE WITNESS: Thank you.</p> <p>6 (Witness excused.)</p> <p>7 MR. POMERANTZ: Your Honor, let me -- a</p> <p>8 couple of things. We have six witnesses that we</p> <p>9 have -- at least all of us have agreed that we</p> <p>10 would propose that you take in writing without any</p> <p>11 further examination by any party. There are three</p> <p>12 witnesses on our side and I believe the other three</p> <p>13 are all NAB proposed witnesses, and the names are</p> <p>14 -- from our end, it would be Ms. Roberts, Mr.</p> <p>15 Foster, and Professor Rysman, R-Y-S-M-A-N. For</p> <p>16 NAB, it's Ms. Koehn, I believe it's K-O-E-H-N.</p> <p>17 MR. JOSEPH: I just learned Rysman.</p> <p>18 JUDGE STRICKLER: Okay, K-O-E-H-N?</p> <p>19 MR. POMERANTZ: K-O-E-H-N. Mr. Chiang,</p> <p>20 C-H-I-A-N-G, and Mr. Gadhoury.</p> <p>21 JUDGE STRICKLER: Gadhoury?</p> <p>22 MR. POMERANTZ: G-A-D --</p> <p>23 MR. RICH: H-O-U-R-Y.</p> <p>24 MR. POMERANTZ: We have Mr. Barros here</p> <p>25 and our request, if possible, I think our direct</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6497	6499
<p>1 will be very short, is to do our best, if we can 2 get him on and off so he can leave. I think they 3 have about a 30 minute -- they get to have a 4 30-minute cross, so we would hope to try to get him 5 on and off today. 6 CHIEF JUDGE BARNETT: Let's go for it. 7 MR. POMERANTZ: Thank you. One other. 8 We had discussed -- we had previously mentioned 9 that we think we will be able to also have Mr. 10 Westergren to submit on the papers as well. We are 11 working on a stipulation and we would expect to be 12 providing that to you shortly. 13 CHIEF JUDGE BARNETT: Thank you. 14 GLEN BARROS, being first duly sworn, to tell the 15 truth, the whole truth and nothing but the truth, 16 testified as follows: 17 DIRECT EXAMINATION BY COUNSEL FOR SOUNDEXCHANGE 18 BY MS. LEMOINE: 19 Q. Good afternoon, Mr. Barros. 20 A. Good afternoon. 21 MS. LEMOINE: Good afternoon, Your 22 Honors. 23 BY MS. LEMOINE: 24 Q. Could you please state your name for 25 the record.</p>	<p>1 testimony. 2 Q. If you flip to the back page, the last 3 page, is that your signature, sir? 4 A. It is, indeed. 5 Q. Is this testimony true and correct? 6 A. Yes, it is. 7 MS. LEMOINE: Your Honor, at this time, 8 we would offer SoundExchange 001. 9 MS. POPE: No objection. 10 CHIEF JUDGE BARNETT: It is admitted. 11 (SoundExchange Exhibit No. 001 was 12 admitted into evidence.) 13 MS. LEMOINE: Mr. Nichols, if you could 14 put up Slide 1, please. 15 BY MS. LEMOINE: 16 Q. Mr. Barros, does this slide, this 17 slide, describe the subject matter you cover in 18 your testimony? 19 A. Yes, it does. 20 Q. We're going to focus on primarily on 21 some subset of this today. 22 But first, could you just briefly tell 23 the judges a little bit about Concord Music Group. 24 A. Sure. Concord Music Group is an 25 independent label and music publisher. We started</p>
6498	6500
<p>1 A. Glen Barros. 2 Q. Could you spell your first and last 3 name for the Court? 4 A. G-L-E-N B-A-R-R-O-S. 5 Q. And where do you work, sir? 6 A. Concord Music Group. 7 Q. And what is your title there? 8 A. President and CEO. 9 Q. What are your job responsibilities as 10 president and CEO of Concord Music Group? 11 A. To guide the overall strategy of the 12 business for our stakeholder's benefit, to oversee 13 operations and all things related to that. 14 CHIEF JUDGE BARNETT: Mr. Barros, if 15 you could move that microphone closer, more 16 centrally in front of you. That would be great. 17 Thanks. 18 BY MS. LEMOINE: 19 Q. Mr. Barros, I'm going to ask you to 20 open your binder. You see there is a document 21 there behind Tab 1. 22 It is a document that SoundExchange has 23 marked as SX 001. 24 Do you recognize that document? 25 A. I do. It is my written rebuttal</p>	<p>1 in 1973, primarily as a traditional jazz label, but 2 over the past 20 years, we have grown quite 3 substantially and diversified in many ways. We now 4 have a very vast catalog of recordings, which we 5 have amassed via acquisition and by development, 6 that amounts to about 10,000 active albums. 7 We also have four active label groups 8 which create music regularly and release more than 9 a hundred new records per year in new recordings. 10 Those label groups are in various genres. We are 11 still the leader in jazz. We have a very strong 12 presence in jazz, blues and related genres. We 13 have a presence in bluegrass and Americana through 14 our Rounder labels, and we have a presence in rock 15 now, which is a recent acquisition and also in pop 16 rock or singer songwriter. We work with a number 17 of legendary artists, the like of which are Paul 18 McCartney, James Taylor, Paul Simon, artists like 19 that. 20 So overall, it is diversified both in 21 the type of rights that we have and the types of 22 music in which we operate. 23 Q. How would you say that Concord is 24 different from other indie labels? 25 A. The indie world is very diverse in and</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6501	<p>1 of itself, but I'd say one thing that we differ</p> <p>2 from most indie labels is the size of our catalog,</p> <p>3 relative to our new releases. A lot of indies are</p> <p>4 newer companies that focus more on their new</p> <p>5 releases.</p> <p>6 We have amassed a very substantial</p> <p>7 catalog. In one case or one difference that we</p> <p>8 have is that our catalog also tends to be much</p> <p>9 older, so we have master recordings that predate</p> <p>10 even the beginning of Concord. They go all the way</p> <p>11 back 50, 60 years or more, so we have a lot of</p> <p>12 recordings in catalog, in general but also in</p> <p>13 pre-1972 recordings, which of course are different</p> <p>14 based on the difference in the economy.</p> <p>15 Q. Right. Are you familiar with Concord's</p> <p>16 agreement with iHeartMedia?</p> <p>17 A. I am.</p> <p>18 Q. Did you have a role in the negotiation</p> <p>19 of that agreement?</p> <p>20 A. I did.</p> <p>21 Q. So if you could flip to Tab 2 of your</p> <p>22 binder.</p> <p>23 It is a document we've marked as SX</p> <p>24 110.</p> <p>25 Do you recognize that document?</p>	6503	<p>1 Q. Could you please describe for us how</p> <p>2 the negotiation of that agreement began?</p> <p>3 A. It began --</p> <p>4 Q. I'm so sorry to interrupt you. I think</p> <p>5 at this time we should probably go into restricted</p> <p>6 session.</p> <p>7 CHIEF JUDGE BARNETT: Okay. Anyone in</p> <p>8 the hearing room who has not signed the appropriate</p> <p>9 documentation, please wait.</p> <p>10 (THIS ENDS PUBLIC SESSION)</p> <p>11 (RESTRICTED SESSION BOUND</p> <p>SEPARATELY)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
6502	<p>1 A. I do. That is our agreement with</p> <p>2 iHeartMedia.</p> <p>3 MS. LEMOINE: Your Honors, at this</p> <p>4 time, we provisionally seek to admit SX 110 subject</p> <p>5 to our earlier prefile filings.</p> <p>6 MS. POPE: We have no objection. The</p> <p>7 document is already in evidence as iHeartMedia</p> <p>8 3365.</p> <p>9 MS. LEMOINE: Okay. Thank you.</p> <p>10 CHIEF JUDGE BARNETT: 3365?</p> <p>11 MS. POPE: I have it as 3365.</p> <p>12 CHIEF JUDGE BARNETT: There had not</p> <p>13 better be anyone else with 3365. That was my one</p> <p>14 rule. 3365.</p> <p>15 MS. LEMOINE: I think we managed to</p> <p>16 follow that one.</p> <p>17 CHIEF JUDGE BARNETT: Having been</p> <p>18 admitted, we will allow, in this portion of the</p> <p>19 testimony, reference to that document as</p> <p>20 SoundExchange 110, which is exactly the same</p> <p>21 document.</p> <p>22 (SoundExchange Exhibit No. 110 was</p> <p>23 admitted into evidence.)</p> <p>24 MS. LEMOINE: Thank you, Your Honor.</p> <p>25 BY MS. LEMOINE:</p>	6504	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

6543

1 CERTIFICATE OF COURT REPORTER

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, Bonnie L. Russo, do hereby certify that the
foregoing transcript is a true record of the
proceedings to the best of my ability, that I am
not related to or employed by any of the parties
involved in these proceedings, and, further, that I
am not a relative or employee of any attorney or
counsel employed by the parties hereto, or
financially interested in the proceedings.

Notary Public

My Commission Expires:
May 16, 2016

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015

Page 1

<u>0</u>	13-B 6369:2,3,22 6370:7 6371:19 6373:20 13th 6361:2 13-week 6362:10 6364:3,8,14 6368:3,21 14 6296:4 6321:16,22 6332:25 6390:1	1776 6255:15 1831 6305:22 192 6389:24 1960 6262:7 1964 6262:17 1973 6500:1 1981 6385:13,23 1996 6262:17	205 6255:19 212-310-8000 6255:9 212-872-1000 6255:12 213-683-9107 6255:5 22 6390:12 226 6492:19,23,24 227 6314:15 6315:6 23 6392:6 2300 6256:8 23-PUBLIC 6254:8 24 6342:9 25 6495:9 255 6380:4 26 6315:13,16 6316:2,17 6387:12 27 6297:25 28 6254:14 6297:21,23 6298:3 29 6298:25 6300:8,10,16,19, 21 6378:15 6395:7
<u>1</u>	144 6367:17 145 6363:14 6364:4 146 6362:15 6363:14 6368:6,11,23 147 6368:19 148 6368:11 15 6264:5 6266:5 6334:14,15 6354:1 6373:25 6493:12,15 6494:1 153 6343:19 6344:2 6346:18 15-CRB-0001- WR 6254:7 15-week 6365:23 16 6314:19,21,23 6316:7,21,25 6543:16 1615 6255:23 16-A 6313:5 6314:19,20,23 6315:10 6316:7,21 6317:3 17 6262:6 6305:7 6490:10 1717 6256:3 175 6354:23 176 6354:24	<u>2</u> 2 6323:21 6357:8,14 6358:8,14 6378:22 6389:23 6501:21 20 6313:3 6385:4 6500:2 200 6265:18,20 20006 6255:15 6256:4 20036 6255:24 20037 6256:9 2009 6493:12,15 6494:1 2014 6370:2,11 2015 6254:14 2016 6543:16 2016-2020 6254:7 202-326-7992 6255:24 2026 6305:23 202-719-7453 6255:16 202-783-4141 6256:10 202-857-6000 6256:4 2034 6305:23 203-966-4770 6255:20	227 6314:15 6315:6 23 6392:6 2300 6256:8 23-PUBLIC 6254:8 24 6342:9 25 6495:9 255 6380:4 26 6315:13,16 6316:2,17 6387:12 27 6297:25 28 6254:14 6297:21,23 6298:3 29 6298:25 6300:8,10,16,19, 21 6378:15 6395:7 <u>3</u> 3 6317:4,10 6318:21 6340:1,24 6367:9 6392:11 6393:6 30 6262:12 6315:15 6365:10,12 6366:24 6373:21 6497:3 30-minute 6497:4
001 6257:17 6498:23 6499:8,11 0029 6363:7 01 6334:9 04 6334:14,15 065 6380:23 06840 6255:19	1 6322:6 6367:11 6378:13 6395:6 6498:21 6499:14 1,755 6266:9 1.5 6380:11 10 6374:14 10,000 6500:6 10036 6255:12 10153 6255:8 11 6333:1 6334:7,15 6383:20,21 6384:5,6 6393:1 110 6257:18 6490:5,11 6501:24 6502:4,20,22 111 6257:19 112 6257:20 12 6295:4 6334:9 12:55 6376:2 122 6322:17 127 6355:15 128 6354:23 13 6295:9 6366:15 6369:5 6373:25 6390:1 6397:15 13-A 6362:19 6363:18,25 6369:2		

Page 2

(866) 448 - DEPO www.CapitalReportingCompany.com © 2015

6341:4 6342:23 6394:5 acquisition 6500:5,15 across 6343:8 active 6262:21 6370:16 6500:6,7 activities 6263:13 6264:15,25 activity 6263:12 actual 6297:15 6309:3 6322:19 6333:4 6373:1 6376:22 6377:2 6380:20 6387:18 6388:1,9,12,21 6389:21 6392:12 6393:7 6394:11 6395:2 6396:19 6488:16,21,22 actually 6271:17 6306:2 6310:2 6317:20,23 6320:6,11 6334:1 6341:25 6342:15 6374:14,17,18,2 3 6377:24 6379:18 6383:15 6384:11 6385:6 6389:12 6394:10,16 6396:5 ad 6305:11 add 6296:24 6309:10 6346:4 6383:6 6389:2 adding 6373:5 addition 6265:8 additional 6328:16 6346:8 address 6273:22 6295:6 6305:6 6306:6	addressed 6305:20 6306:14 addresses 6269:2 addressing 6274:1 adequately 6394:1 6395:10 adjective 6345:17 adjusted 6313:16 6314:2 adjusting 6372:25 adjustment 6274:7 6305:15 6307:6 6356:2 6358:9,15 6371:9,11,13,17 adjustments 6305:10 6326:2 6373:3 admission 6267:10 admit 6502:4 admitted 6257:15 6258:7,16,19 6268:7 6270:13,14 6383:25 6499:10,12 6502:18,23 adopt 6267:16 adopted 6383:13 6493:4 ad-supported 6305:16 6307:7,16,18 6308:2 6491:10 advantage 6340:10 6341:5,6,9,24 advantages 6339:25 6343:5 advert 6345:7 6346:18 advised 6314:14	affect 6299:5 6304:22 6307:21 6375:6,9 affected 6295:14 6296:15 6323:9 6325:1 affects 6298:17 6323:12 6396:9 affiliated 6355:7 affirmative 6268:11 afternoon 6375:18 6376:5,6,15 6486:11,12 6497:19,20,21 against 6301:19 6322:15 6326:12 aggressive 6344:19 ago 6357:25 6358:3 agreed 6267:17 6306:1 6328:24 6329:4,9 6335:23 6382:18 6386:10 6389:22 6390:16,24 6391:2 6496:9 agreement 6257:18 6267:21 6268:8 6296:11,14,16,2 2 6297:3 6298:6,7,10,14,1 6 6299:6 6302:6 6303:13 6319:21 6320:10,20,21 6321:18 6322:9 6323:6,14 6325:13 6326:2,13,18,24 6327:23,24 6328:21 6332:24 6333:11 6334:4 6336:6 6338:4,11,14	6341:18 6342:12 6348:25 6349:4 6372:9 6373:1 6376:21,23 6377:22 6379:6,15,17 6382:20 6387:18 6389:4 6390:25 6399:6 6400:11 6487:8 6493:18 6501:16,19 6502:1 6503:2 agreements 6258:20 6296:23 6297:21,25 6298:23,25 6299:3,7,9 6300:4,7,8,17 6301:4 6312:22 6313:22 6316:3,18 6317:6 6318:3,13,14,19 6321:1 6323:10 6324:25 6340:4 6343:3 6389:11 Ah 6365:20 ahead 6338:24 6392:22 6395:8 air 6266:4,9 AKIN 6255:10 albums 6500:6 algorithms 6491:1 allegations 6269:15 allow 6306:23 6335:14 6344:10 6495:14 6502:18 allows 6307:15 alone 6302:8 6303:11 6307:15 6352:23 Alpha 6261:5 already 6260:3 6311:21 6330:23
--	--	---	--

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015
Page 4

6380:19 6493:8 6502:7 alternative 6309:14 alternatives 6388:5 am 6266:25 6271:16 6273:19 6298:21 6314:5 6316:4 6319:15 6348:9 6362:2,3 6363:24 6384:4 6385:2 6389:15 6396:21 6399:24 6488:25 6490:6 6501:17 6543:5,8 amassed 6500:5 6501:6 ambiguous 6387:21 ambit 6325:15 America 6255:11 American 6381:19 Americana 6500:13 among 6309:13 6333:24 6388:3,4 6399:3 6490:21,22 6491:8 6493:3 amortizing 6392:11 6393:7 amount 6361:19 6374:17 6382:16,21,24 6390:17 amounts 6500:6 analogy 6359:12 analyses 6331:20,25 6350:20 6351:22 6352:8 analysis 6311:15	6329:5,7 6331:4 6332:1,3,6,8,17, 19 6349:20 6350:9,11,14 6353:10 6354:4,9 6356:2,25 6357:5,11 6358:16 6359:21 6369:12,17 6371:18 6372:10 6384:3 6387:17 6488:13,18 6489:19,23 6491:20 analyze 6332:13 6353:23 6400:18 analyzed 6353:17 6376:20 Angeles 6255:4 Anjan 6256:15 6270:24 annual 6369:24,25 6370:11,12,14 answer 6270:17 6311:13 6316:11 6332:16 6336:5 6342:11 6350:18 6352:11 6353:15 6354:2,7,14 6357:11 6361:15 6365:22 6390:20,23 6392:3,8,20,23 6393:1 6396:12 6398:20 6492:6 answers 6333:2 6374:7 6390:14 6396:10 anticipated 6367:24 anxious 6265:12 anyone 6272:15 6274:19 6401:5 6502:13 6503:7 anything 6269:1	6316:14 6330:4 6350:9 6395:24 6493:16 anywhere 6394:17 apart 6297:7 Apologies 6363:1 appear 6315:7 6394:17 appearance 6305:21 APPEARANCES 6256:1 appeared 6353:24 6394:16 Appendix 6339:3 6371:2 Apple 6390:16,23,24 6391:2 6392:4,10,14 6393:5 Apple's 6392:13 6393:8 apply 6343:11 6381:7 applying 6381:13 6382:2 6386:7 appointed 6262:21 approach 6377:9 6383:2 6387:20 6388:21 6389:10 6400:24 6493:5 approached 6385:20 approaches 6387:23 approaching 6385:10 appropriate 6296:13 6305:22 6306:11 6341:2 6371:16 6373:9	6377:9 6385:11,20 6503:8 approximately 6263:2 6298:25 April 6361:2 6390:1 apropos 6387:9 area 6338:18 aren't 6487:11 ARENT 6256:2 arguing 6361:13 argument 6336:10 arguments 6335:21,22 arises 6374:16 arithmetic 6301:20 6380:18 arm's 6383:3 arrangement 6342:2 arrangements 6343:7 arrive 6336:25 artist 6304:7,9 artists 6302:23,24 6304:4 6349:25 6500:17,18 arts 6263:17 aside 6298:22 6300:1,3,13 6386:5 aspect 6297:20 6372:14 aspects 6274:3 6356:9 assert 6321:17 6364:21 6367:16 assertion 6352:13 6395:21 6398:11 assigned 6333:16
---	--	--	--

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015
Page 5

6336:1 associated 6378:24 6379:6 association 6255:13 6262:4 assume 6304:3 6333:15 6354:11 6398:7,21 6399:8 assumed 6308:9 6369:23 6370:16 assuming 6326:9 6371:20 assumption 6308:12,15 6311:3,4 6333:20 6357:1 6488:5 assumptions 6399:5 ATH 6266:8,11 atomistic 6304:13,15,20,2 3 attached 6400:9 attaches 6399:13 attain 6371:23 attained 6354:18 attempt 6400:18 attempted 6328:7 6356:17 attempting 6369:1,8 attorney 6543:8 attributed 6357:8 atypical 6318:20 6319:1,4 Avenue 6255:4,8 average 6266:8 6320:25 6321:3 6364:7 6368:1 avoid 6295:16	awards 6265:12 aware 6269:5 6372:24 6377:18,25 6379:13 6396:13 6398:10 6399:12 awareness 6338:1 away 6302:18 6373:21,24 6375:2 axis 6367:4 <hr/> <p style="text-align: center;">B</p> <hr/> ballpark 6321:4,5,7 Bank 6255:11 bargain 6487:3,22 bargaining 6299:20 6302:17 6303:4,17,20 6334:11 6344:13 6345:9,21,25 6346:2,9,10 6347:9 6360:12,13 6361:22 6362:4 6374:8,20,21,25 6375:1,11,12,14 6487:25 bargains 6299:24 6302:4 BARKER 6256:8 BARNETT 6254:20 6258:4,12 6259:3,7,10,16,2 0,22 6260:2,7 6261:2,7 6263:24 6264:11 6266:20 6268:14 6269:3,18 6270:1,5,9,12,16 6272:14,22 6274:18 6306:22 6311:10,22 6312:3,9	6319:13 6321:24 6322:5 6337:13 6338:20,23 6375:23 6376:4 6379:1 6391:19 6392:22 6401:4 6486:2,7,18,22 6494:6,10 6495:13,22,25 6496:2 6497:6,13 6498:14 6499:10 6502:10,12,17 6503:7 Barros 6257:11,17 6496:24 6497:14,19 6498:1,14,19 6499:16 B-A-R-R-O-S 6498:4 base 6308:1 based 6313:23 6342:13 6356:3 6358:16 6369:23 6376:11,22 6378:10 6380:12,23 6387:18 6390:25 6395:25 6400:19 6501:14 basically 6262:9 6265:2 6303:1 6308:20 6310:14 basis 6316:1 6318:25 6331:3 6340:6 6377:22 6378:1 6389:2,15 6390:18 basketball 6265:15 Bear 6365:19 beauty 6334:17 became 6262:8 become 6365:2	becoming 6366:3 begin 6306:19 6312:4 6364:10 6366:10 6375:19 beginning 6342:9 6361:11 6367:16 6380:8 6390:12 6392:1 6393:1 6395:12 6501:10 BEGINS 6295:1 6486:1 behalf 6255:2,6,13,17,2 1 6256:2,7 6261:13 behind 6498:21 beholder 6334:18 belief 6267:20 believe 6258:18,21,25 6273:6,9 6297:23 6312:20 6313:5,25 6317:20,23,25 6318:1 6320:7,12,13 6325:7 6333:15 6344:8,15 6345:18 6347:1 6349:5 6353:12 6355:22 6356:20 6368:6 6372:20 6374:2 6387:1,19 6395:21 6400:12 6486:15,21 6487:18 6488:7,24 6490:14 6491:13 6496:12,16 believed 6345:3 6377:9 6400:15 bench 6260:5 6266:17 6269:13 benchmark 6274:4,8 6296:7
--	---	---	--

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015
Page 6

6312:23 6313:16 6317:17 6322:11 6324:15 6325:10 6326:25 6356:1,2,19 6376:22 6379:16 benchmarking 6321:2 benchmarks 6312:17 6317:24 6321:13 6326:15 beneficial 6487:8 benefit 6363:17 6369:17 6498:12 Benjamin 6256:18 Bennett 6256:20 best 6258:18 6265:3,8,14 6308:19 6312:20 6318:2 6331:6 6388:4 6497:1 6543:5 better 6335:15 6387:19,21 6388:21 6502:13 beyond 6266:11 6311:14 6320:15 6331:14 6352:21 6356:10 bigger 6304:24 6341:20 6366:4 6374:22 billion 6380:12 bills 6272:2,7 binder 6267:2 6273:10 6361:1,6,7 6362:25 6363:5 6376:8,9,11 6378:14 6389:24 6397:9 6490:8 6492:22 6498:20 6501:22 binders 6273:5 6313:1	binding 6494:24 6495:3 bit 6334:13 6350:25 6363:2 6499:23 bites 6259:11 bits 6259:11 blanket 6325:21 Blavin 6256:16 blended 6380:22 blown 6322:19 blue 6363:2 6365:7 6366:18 bluegrass 6500:13 blues 6500:12 board 6254:2 6394:8,11,12,16 6395:16 6396:5,17 6398:9,13,17 6400:14 bolster 6356:18 bona 6267:21 Bonnie 6256:25 6543:3 book 6259:23 boost 6341:13,19,22 6342:1 boosts 6339:25 6342:10 6343:5 bottom 6353:17 6367:5 6390:8 bottom-most 6365:15 BOUND 6274:22 6401:9 6503:11 break 6266:7 6312:4 6338:19 6375:21,24 breakdown 6264:2 6266:19	brief 6308:17 6486:5 6494:15 briefing 6495:20 briefly 6262:10 6268:15 6306:10 6499:22 bring 6274:17 broad 6391:21 Broadcast 6263:1 Broadcasters 6255:13 broadcasting 6255:17 6260:16 6261:14,22 6262:2 6263:12 broader 6491:2 Bruce 6255:7,14 6486:13 Bryant 6255:11 6256:16 build 6263:18 bullet 6301:11 bunch 6259:11 6260:8 6310:3 bundle 6339:5 burden 6358:6 business 6307:20 6490:18 6491:7 6498:12 buyer 6323:4,7,15 6348:14 6359:8,23 6360:17 6382:4 6386:9,17 6387:2 buyer/willing 6381:7,13 6382:3 6386:8 6387:5 buyers 6323:24 6336:21 6347:12 6488:1	<hr/> <div style="text-align: center;">C</div> <hr/> Caitlin 6256:20 6376:16 calculate 6367:24 6373:3 6380:10 calculated 6369:24 6370:2 6488:16 calculating 6305:14 6307:5 6316:16 6380:5 calculation 6307:11 6368:22 6370:6,15 6374:3 6380:18,22 6488:22,23 6491:24 6492:3 calculations 6297:15 6307:23,24 6313:24 6331:18 6332:8,22 6373:13,20 6384:12 California 6255:4 Canaan 6255:19 canvas 6262:10 Capital 6256:25 captain 6259:21 6262:12 caption 6321:17 capture 6359:7 career 6262:11 careful 6296:20 carefully 6332:20 6350:19 carrot 6303:8 carry 6320:20 case 6295:17 6300:23 6306:12 6314:8 6317:21
---	---	---	---

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015
Page 7

6334:2 6335:16 6352:19 6353:8 6368:25 6377:9 6382:2 6383:6,7,14,17 6385:5,11,21 6386:1,7,16 6388:11 6397:18,19,20 6398:9,11 6400:25 6501:7 case-by-case 6389:1,15 cases 6381:6,11 catalog 6344:3,12,20 6500:4 6501:2,7,8,12 catalogs 6344:1 6348:19 6349:22 6351:14 6352:4,17 6355:19 categories 6388:3 CBI 6267:15,23 6268:1,9,12,13 6269:4,8 centrally 6498:16 cents 6380:23 CEO 6498:8,10 certain 6267:16 6314:10 6316:20 6328:13 6334:8 6335:11 6357:4 6360:19 6362:6 certainly 6268:2,18 6316:22 6324:15 6375:11 6381:20 6386:22 6398:5 6487:9 6493:13 certificate 6274:20 6401:6 6543:1 certify 6543:3 cetera 6266:7	chance 6311:16 6486:15 change 6346:6,7 6370:24 6487:25 channel 6266:1 chapter 6271:15 6374:14 characterization 6332:19 6356:8 6385:3 6396:24 characterizations 6355:12 characterize 6318:18 6381:12 characterized 6341:21 6377:1,4 characterizing 6347:21 charge 6359:16 chart 6365:18 check 6326:8,11,16 6348:5 6362:22 6396:2 checks 6326:11,16 chem 6263:20 Chiang 6496:19 C-H-I-A-N-G 6496:20 chief 6254:20 6258:4,12 6259:3,7,10,16,2 0,22 6260:2,7 6261:2,7,23,24 6263:24 6264:11 6266:20 6268:14 6269:3,18 6270:1,5,9,12,16 6272:14,22 6274:18 6306:22 6311:10,22 6312:3,9 6319:13 6321:24	6322:5 6337:13 6338:20,23 6375:23 6376:4 6379:1 6391:19 6392:22 6401:4 6486:2,7,18,22 6494:6,10 6495:13,22,25 6496:2 6497:6,13 6498:14 6499:10 6502:10,12,17 6503:7 choice 6318:7 chose 6338:10 chosen 6322:15 6338:8 Choudhury 6256:15 6257:4 6266:10 6267:9 6268:14 6270:11,20,24 6272:12 circulate 6379:20 circumstance 6370:19 circumstances 6299:5 6495:18 cite 6316:14 6326:23 6347:18 6384:16 6398:13 6400:13 cited 6331:11 6393:15 6400:5 cites 6331:15 citing 6319:15 6354:21 6384:17 citizen 6271:16 City 6265:8 claim 6343:18 6358:24 clarification 6366:24 6399:16 clarity 6388:23	classifications 6265:23 clean 6307:11,17,18 clear 6315:24 6336:10 6339:10 6354:9 6360:10 6384:9 6386:23,25 6388:16,24 6399:20 6492:11,14 clearer 6365:20 close 6387:20 6401:3,5 6493:17 closed 6274:17 6486:19 closely 6296:1 closer 6266:22 6498:15 clout 6349:9 coast 6262:24 6265:5 Cobbler's 6255:18 Colin 6256:15 college 6262:5 6263:3,10 6264:6 6266:3 colleges 6263:13 6265:6 colloquy 6312:15 6315:1 Colorado 6381:18 6385:24 colored 6364:17 column 6314:2,6 6315:2,4,7,8,9,1 1,19 combat 6262:13 comes 6313:13 6392:11 6393:6 comfortable
--	---	---	---

6333:20 6336:8,13 6361:15 6388:12 coming 6312:14 6329:22 commander 6262:22 comment 6383:9 6491:2 commenting 6274:2 6383:12 comments 6267:4,11,18 6268:22 6269:6,10 commercial 6320:20 6368:15 Commission 6543:15 commissioned 6262:16 communicate 6265:4 communications 6263:20 community 6263:3,10 6264:10 6266:3 community-based 6264:8 companies 6301:17 6302:9,15 6305:2 6324:2,6 6325:22 6340:12,17 6501:4 company 6256:25 6304:13 6341:5 comparability 6321:19 6322:10 6326:19,20 compare 6366:10 comparing	6389:20 compelled 6338:4 compelling 6331:13 6332:2 6335:22 6336:11 6395:17 compensate 6342:12 competition 6309:13 6311:7 6342:25 6343:15 6346:22 6347:10 6355:17 competitive 6341:6 6347:6,7 6359:14,16 6385:23 6487:15 competitors 6341:11,24 complete 6325:22 6489:18 completed 6340:2 compliance 6325:23 complicates 6393:4 complies 6301:9 6313:4 6319:12 component 6272:8 6301:24 6335:13 6339:16 components 6309:21 6335:2 6339:14 6356:25 6358:17 comports 6383:2 composition 6262:25 6266:14 computation 6372:22 computed 6373:4 conceivable 6330:24 6331:3	concentration 6304:16 concept 6360:16 6383:3 concern 6323:8 concerned 6296:10 concerns 6326:10 concessions 6487:25 conclude 6354:17 concludes 6269:19 conclusion 6297:2 6331:20 6336:9,12 6357:2 6396:10 conclusions 6349:21 6351:12 6352:1,20,23 Concord 6257:18 6498:6,10 6499:23,24 6500:23 6501:10 Concord's 6501:15 condition 6310:7,10 6489:1,7 conditions 6310:17,22 6311:1,6 6328:1 conducted 6362:7 conference 6265:7,20 conferences 6265:5 confidential 6274:13,14 confirm 6258:24 confused 6352:11 confusing 6330:19 Congress 6254:3	6379:14 Connecticut 6255:19 6265:15 consequences 6268:10 conservative 6358:20 consider 6298:6 6302:21 6317:24 6318:1 considerable 6368:13 consideration 6269:10 6325:1 6339:5 considerations 6296:8 considered 6394:7 6395:12,15 6397:1 consistent 6329:15,23 6385:25 consists 6325:21 constant 6300:14 6368:1 constitute 6298:8 constitutes 6298:9 contain 6258:15 contemplate 6343:14 contend 6347:11 contention 6322:14 context 6269:11 6313:15,17 6340:11 6395:4 continue 6320:15,21 6364:2 6367:25 6380:25 continued 6256:1
---	---	--	---

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015
Page 9

6367:19 6369:4 continues 6366:1 6382:22 6392:9 continuing 6364:22 6380:16 contract 6297:9 6315:22 6354:13 contracts 6297:6,8,13,16 6300:11 6303:14 6312:16 6315:20 6316:8,23 contradict 6352:23 6398:11 contrast 6319:22 control 6374:24 convened 6254:17 convenience 6322:19 6490:6 convergence 6309:17 6346:15 convinced 6329:3 6362:2,4 6371:16 convincing 6329:14 copies 6260:1,6 copy 6384:20 COPYRIGHT 6254:2,19 Corps 6262:23 correct 6258:13,16 6259:6,9 6261:19 6271:3,22 6272:2,9,10 6298:1 6299:2 6313:25 6314:5,9 6315:17 6316:3,9,18,21 6317:18 6321:20 6323:11,16,17	6324:2,6,19,22 6325:2,10,24 6326:4,7,13,20 6327:3,8,13,16,1 9 6328:9 6333:8,12 6335:2 6337:19 6338:1,2,5,8,11, 14 6339:12,15,18 6340:5,8,13 6341:7,15,16 6343:6,15,17 6344:1,14 6345:1,4,9 6346:2 6348:20 6349:9,18 6350:3,10,12 6351:16 6352:8 6354:20 6355:22 6356:6 6358:11,13,20 6359:2,5,17,18 6360:8,18 6362:8,14,20 6363:24 6364:11 6367:21 6368:16 6369:18 6370:3,19,23 6371:6,12,24 6372:9,10 6375:2 6376:23 6377:3 6379:11 6381:9 6384:19 6386:10,24 6390:19 6391:19 6393:12,20 6394:2 6395:23 6396:1,3 6399:1,6 6400:6,11,12,15, 20 6487:17 6488:24 6490:19 6499:5 correctly 6300:15 6322:12 6365:17 6381:3 cost 6310:11,13 6352:16 6367:20	6369:16,17 6373:21 6380:20 6489:4 costly 6369:6 costs 6309:1,2,4 6491:18,21 6492:2 counsel 6258:6 6260:15 6270:19 6273:13 6312:10 6363:9,19 6376:13 6377:20 6385:15 6397:12 6486:9 6494:20 6497:17 6543:9 count 6315:13,15 6326:10 Counterproposal 6257:20,22 counting 6300:11 counts 6486:8 couple 6270:25 6387:9 6496:8 course 6268:20 6273:9 6368:16 6392:24 6501:13 Court 6261:10 6358:13 6360:11 6498:3 6543:1 courtroom 6274:19 6401:3 Court's 6311:12 6358:6 cover 6307:23 6499:17 covered 6349:25 6357:22 6358:4 CPI 6267:5 crafting 6312:17 create 6500:8 created 6362:19 6363:25 credibility	6302:18 credible 6302:13 6303:12 6304:9,14 credit 6394:24 6395:19 criteria 6326:20 criterion 6326:4 criticism 6305:18 6307:9 6308:8 6328:20 6340:6 criticisms 6297:22 6362:6 criticize 6306:17 6319:20 6339:21 6340:3 6372:6 criticized 6338:17 critique 6488:5 critiques 6274:6 6305:9 critiquing 6393:20,21,22,2 3 cross 6257:2 6497:4 cross-examination 6270:19 6312:1,10 6361:7 6363:5 6376:8,13 6486:9 6490:8 Cunniff 6256:3 6494:7,8 Cuomo 6262:20 curious 6381:21 current 6261:23 6319:7 currently 6261:19 curve 6366:1,6 curves 6365:4,8 6366:8 custom 6490:22
--	--	---	--

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015
Page 10

6491:4 customers 6487:22 cut 6361:18 6364:21 6374:17 Cutler 6397:5 6398:4,8 Cutler's 6397:13,24 Cyanamid 6381:19 <hr/> D D.C 6254:4,13 6255:15,24 6256:4,9 damage 6384:3 damages 6386:2 Damson 6383:24 6384:9 6385:10,19 Damson's 6384:17,24 6385:7 6386:5 Daniel 6257:6 6272:20,25 dark 6365:7 darker 6366:18 data 6297:14 6313:23 6314:5 6315:3,7,10 6316:2 6366:14 6377:10,16 date 6313:20 6493:15,17 DAVID 6254:21 6256:7 day 6266:5 6295:25 6494:14 days 6266:5 DD 6397:13 deal 6257:21 6269:13	6274:3,5 6295:12,13,14,1 9,20,23,25 6296:6 6317:16 6324:4 6325:7 6329:25 6330:16 6331:7,19 6332:4 6333:3 6335:1,8,17 6338:1 6339:7 6345:11,16 6353:18,21 6356:14 6377:12 6399:18 6400:15,23 6493:10,19,23 dealing 6392:21 6488:2 dealings 6361:14 deals 6299:22 6335:11 6354:19 6355:8,12 6356:10,15 6493:6 decide 6320:20 6335:12 6389:1,14 6495:6 decision 6296:12 deck 6394:16 6400:13 decline 6369:4 decrease 6367:6 deeply 6388:11 defeat 6344:7 define 6323:24 6325:20 definitely 6375:8 6381:10 definition 6347:8 degree 6325:1,3 6343:21 6345:21 degrees 6494:19 delighted 6486:24	demand 6309:16,18,19 6310:5,12 6351:13 6352:3,17 6488:9,14,19 6489:4,9,11,12,1 4,20,24 6490:14 6492:8,9 demands 6309:24 6310:16 demonstrate 6329:8 6363:25 6367:23 demonstrating 6355:16 demonstrative 6273:11 6363:20 6364:15 denied 6267:25 depend 6307:20 6495:18 depending 6320:19 6334:2,17,18 6375:5 Depends 6357:6 depict 6369:1 depicted 6315:3,5 6364:18 6366:15 6369:21 6371:19 deposition 6318:5 6320:5 6340:21 6341:1 6342:4,9,20 6353:24 6361:2 6372:12 6373:16 6386:16 6390:1 6391:10,13 6397:25 6398:2 depositions 6398:3 deprived 6327:12 derive 6376:22 6400:19	derived 6310:4 6314:6 6321:11 derives 6314:7 deriving 6315:24 describe 6266:17 6305:11 6311:6 6313:9 6314:19 6330:2 6335:8 6340:15 6341:14 6349:11 6388:13 6499:17 6503:1 described 6295:9 6303:18 6318:4 6320:8 6324:11,17 6329:24 6340:24,25 6344:4,6 6396:25 6400:14 describes 6313:15 6330:2 describing 6266:14 6330:8 description 6308:17 6320:1 6352:9 6368:9 Desert 6262:14 design 6343:10 detail 6357:17 detailed 6358:16 details 6354:12 detect 6364:10 determination 6254:7 6321:12 6383:8 determine 6333:7 6380:11 6381:8 determined 6395:11 determining 6379:16 development 6500:5
--	---	---	---

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015
Page 11

devote 6393:19	6306:16	6387:22 6491:14	6258:7,9,20
differ 6265:25	6313:2,6	discussion	6273:8 6388:16
6349:17 6354:25	6314:15 6315:6	6312:18 6318:13	dollar 6368:14
6355:4 6501:1	6321:11 6322:17	6360:3 6368:6	donate 6271:21
difference 6304:6	6327:2,22	6377:15	done 6269:10
6314:24 6332:15	6328:23 6336:17	disk 6259:15	6331:20 6332:7
6345:20 6352:14	6337:5,6,7,10	disks	6350:20,24
6356:18,21	6339:3,21	6258:8,10,14,23	6351:7
6360:11 6374:12	6340:12 6343:3	6259:1,4,14,15	6353:7,10
6395:22	6345:18	dispute 6323:14	6372:15,18
6501:7,14	6348:1,6	6358:21	6488:22 6489:7
differences 6356:5	6354:19 6357:23	disregard	6495:14
6358:10 6359:12	6360:2 6363:21	6318:17,25	doors 6486:23
6490:16,17,22	6371:3 6376:11	distinct 6299:24	dormitories
6491:3	6399:17 6490:5	distinction	6263:11
different 6263:8	6493:6,10,19,23	6314:22 6394:15	dotted 6363:19
6266:16 6268:16	6496:25 6497:17	6396:4	6366:7
6297:7 6298:19	directed 6343:23	distinguish	double 6326:10
6299:5,21	6364:14	6365:22 6374:8	double-check
6305:8	direction 6385:22	distinguishable	6347:18
6307:12,20	directly 6310:21	6320:17	doubt 6392:10
6308:3,5	6311:19,23	distinguishing	6393:5 6398:15
6309:13 6310:21	6325:7 6327:1	6365:25	downstream
6316:7 6318:10	6348:18 6353:13	distribute 6381:14	6309:11,24
6335:1,7,9	6374:24	distributed	6310:7
6355:11 6356:16	directors	6259:24	6488:9,14,19
6366:12 6368:22	6394:9,11,12,16	diverse 6500:25	6489:13,17
6391:12 6398:18	6395:17	diversified	downward 6365:3
6500:24 6501:13	disagree 6342:21	6500:3,20	Dr 6330:9,12,14
differentiated	6385:3 6391:4	dividing 6370:1	6335:3 6362:7
6380:21	disagreed 6383:16	6374:21	6363:21 6379:23
difficult 6332:13	disagreements	DMCA 6325:23	6399:19
6333:21 6335:5	6384:11	docket 6254:6	Draft 6257:19
6389:6	disappointing	6381:24	dramatically
difficulty 6353:25	6392:13 6393:9	document 6266:25	6263:8
dig 6317:12	discounted	6267:13,25	draw 6296:21
digit 6364:21	6328:22	6268:21 6397:22	6302:1 6315:10
Digital 6254:9	discuss 6273:20	6498:20,22,24	6388:16
dimensions	6301:10 6318:23	6501:23,25	drawing 6297:2
6328:12	6371:14,15	6502:7,19,21	drawn 6312:16
DIR 6257:2	discussed 6258:21	documentation	6349:21 6364:13
direct 6257:24	6303:10 6374:7	6503:9	drew 6312:21
6260:15 6268:25	6497:8	documents	6313:22 6316:2
6273:6,13	discussing		
6305:21,25			

driven 6492:9	6295:18,24	else 6330:4	envision 6344:9
drives 6308:24	6301:2 6330:15	6502:13	Ephemeral 6254:8
duly 6260:12	6346:4 6351:15	elsewhere 6354:17	equal 6311:1
6273:1 6497:14	6352:5 6364:7,9	E-Mail 6257:21,22	6336:7 6342:1
duplicates 6260:1	6366:3 6368:20	emendation	6489:8
duration 6320:25	6371:18	6363:8	equation 6369:13
6362:11	effective 6330:17	emphasis	6371:6
during 6273:8	6333:4 6334:4	6491:9,10	error 6372:23
6314:25 6327:23	6346:21 6368:1	empirical 6350:11	ESQUIRE
6331:16 6345:18	6373:4 6380:22	6351:7	6255:3,7,10,18,2
6363:21 6364:9	6392:16	6353:6,12	2 6256:3,7
6368:21 6369:5	effectively 6334:9	6354:12 6356:24	essentially
duty 6262:21,23	effects 6295:11	6357:5,11	6263:15 6295:19
dynamic	6350:6 6364:10	6359:21 6360:5	6386:11 6388:25
6346:17,21	effort 6342:15	employed	establish 6359:22
	efforts 6343:23	6543:6,9	6369:1,9
	Ehler 6256:16	employee 6543:8	6371:19
	6258:17,25	employees 6262:2	estimate 6297:10
E	eight 6364:14,19	endeavor 6486:4	6490:2
earlier 6259:13	6366:16	engaging 6271:6	estimated
6319:5 6344:5	either 6324:9	enrichment	6369:20,22
6374:6 6502:5	6334:5 6335:3	6383:8	6370:13
easier 6322:24	6341:1 6359:25	enter 6295:22	estimates 6266:12
easy 6270:18,22	6360:25 6365:18	6327:22	et 6266:7
6310:16	6379:18 6393:13	6338:4,10	evaluate 6321:13
EBIN 6255:10	6492:14	entered 6323:15	6333:21 6354:13
economic 6298:10	elaborate 6264:24	6324:5 6356:3	6362:1 6369:17
6321:12	elasticities 6488:9	6393:12	evaluated 6332:7
6322:15,20	6490:14,16	entire 6312:7	6350:1,19
6326:12 6330:15	elasticity	6337:16 6339:8	evaluating
6378:7 6383:3	6309:16,17,19,2	6344:1,3,12,20	6326:15 6381:11
6384:1	4 6310:11,15	6346:19 6364:7	evaluation
economics	6351:13	6392:20,23	6339:11,13
6302:14 6332:4	6352:3,17	entirely 6329:15	EVANS 6255:22
6494:19	6488:14,17,19	6492:14	events 6267:15
economist 6331:6	6489:4,9,11,12,1	entires 6265:13	everybody 6273:4
6347:4	4,17,20,24	entities 6263:4	6274:17
economists	6490:3 6492:8,9	6264:1 6298:9	everyone 6258:6
6305:13 6307:4	elect 6327:10	6313:22	6295:20 6298:14
6308:8 6359:7	electricity 6272:2	entity 6262:19	6303:13 6343:11
economy 6501:14	elements 6329:25	6264:9 6298:11	everything
edited 6259:5	6332:10,12	6358:24	6258:18 6259:1
Educational	6375:1	entries 6265:11	6296:1
6256:7	ellipses 6327:14		
effect 6268:11			

6329:14,17 6490:7 evidence 6257:15 6268:8 6270:15 6318:1 6335:25 6347:9 6352:22 6355:24 6361:21 6364:22 6384:1 6398:10,13 6400:14 6499:12 6502:7,23 exact 6316:5 6321:3 6345:16 6347:7 exactly 6298:15 6301:25 6315:15 6316:17 6342:19 6345:14 6352:10 6356:22 6361:25 6363:20 6370:5 6373:13 6394:14 6502:20 exaggerate 6334:13 examination 6257:2,6,10 6260:15 6273:9,13 6312:7 6315:3,6 6337:12 6345:19 6349:6 6357:23 6358:2 6363:22 6375:19 6376:11 6391:9 6494:20 6496:11 6497:17 examine 6322:14 6348:15 example 6271:13,21 6303:6 6307:15 6309:2 6329:20 6330:9 6331:21 6334:7,14 6344:4,11,15 6355:5 6365:4 6491:4 exceeds 6336:19	exchanged 6339:6 exclude 6377:20 excluding 6268:10,11 excuse 6263:24 6373:25 6492:21 6493:4 excused 6272:18 6496:4,6 executive 6261:23,24 exercise 6304:1 6307:18 6344:7 exercised 6361:13 exhibit 6257:17,18,19,2 0,21,22,23,24 6258:16 6261:10 6267:1,10 6269:25 6270:1,10,12,14 6313:2,5,10,12 6314:19 6315:9 6316:24 6362:19,21 6363:18,25 6369:2 6372:10 6373:20,23 6374:4 6378:15 6389:24 6395:6 6397:10,13 6490:10 6499:11 6502:22 exhibits 6257:15 6273:7 6316:15 exist 6263:16 6335:19 existence 6375:4 existing 6323:10 exists 6304:16 expect 6336:24 6385:13,23 6497:11 expectation	6380:24 expectations 6377:1,4,6,17,23 6378:11 6379:15 6387:16,24 6388:1,14,15 6393:11,20,22 6400:19,20,22 expected 6368:13 6380:13 expense 6341:10 experiment 6362:11,12 6364:8,14 6366:7 6368:3 experiments 6362:7 6364:2 6365:9,23 6367:19 6369:3 6371:22 expert 6381:5,18 6382:16 6383:14,16 6384:11,12 experts 6306:10,16 6310:3,9 6329:12 6330:8 6355:7 6384:1 Expires 6543:15 explain 6296:5 6306:21 6317:22 6328:24 6374:11 6377:15 6394:1 6395:11 6495:1 explained 6330:23 explains 6310:4 explicitly 6371:3 express 6362:1 expressed 6296:9 6299:19 6360:24 extend 6320:21 extensive 6265:10 extent 6263:22	6264:5 6265:24 6306:3,14 6307:22 6325:9 6336:4 6339:23 extra 6334:8,10,12 extracurricular 6264:15 extras 6357:9 extremely 6494:15 eye 6364:15 eyes 6334:18 6365:18 <hr/> F <hr/> F2 6371:2 F3 6371:2 fact 6261:18 6268:17,23 6299:21 6300:6,7,15 6301:1 6303:3 6305:21 6306:4 6309:11,22 6319:6 6354:17 6356:9 6358:8 6372:22 6396:13,14,19 6397:2 6398:16 factor 6355:16 facts 6311:20 fail 6371:22 failing 6394:24 6395:19 6487:7 fails 6321:19 6322:9 6326:18 fair 6332:18 6381:12 fall 6265:5 6366:1 fallen 6338:7 falling 6325:14 6366:6,8 falloff 6362:13 6371:4
---	---	--	--

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015
Page 14

familiar 6359:4,20 6487:10 6501:15	6355:3	focus 6318:3 6383:11 6389:9 6499:20 6501:4	fun 6265:9
favor 6301:15	firm 6359:13,15 6487:13		functionalities 6308:5
feature 6302:23 6343:4	firms 6487:3,7,21,24	focused 6389:10 6395:14	functionality 6307:12
features 6328:13,16,18 6490:17,21,25	first 6260:12 6262:4 6273:6,10,24 6274:12 6295:8 6301:10,11,13 6302:15 6305:10 6312:25 6323:18 6339:24 6340:10,11 6341:5 6343:4 6346:25 6358:2 6379:25 6380:8 6386:4 6393:2 6490:10 6497:14 6498:2 6499:22	focusing 6315:1 6389:3 6491:1	functionally 6313:12
February 6493:12,15 6494:1		foregoing 6543:4	fundamental 6326:24
Feder 6254:22 6266:21 6269:21 6327:4 6495:25 6496:1		forget 6345:16 6347:7	funds 6341:23
federal 6262:21 6379:21		form 6308:4 6331:5	furthermore 6309:5
fee 6392:12 6393:7		format 6258:8	fussy 6365:19
feel 6388:11		forming 6324:13 6384:2	<hr/> G <hr/>
FELD 6255:10	Fischel 6377:21 6378:23 6379:4 6393:16,25 6394:6 6395:10 6396:16,25 6397:18	forms 6316:1 6343:14	G-A-D 6496:22
felt 6384:18		forth 6313:9,21 6329:7 6333:3 6353:12	Gadhoury 6496:20,21
fides 6267:21		forward 6307:25 6320:21 6356:20 6357:1 6384:3	gain 6341:14
Fifth 6255:8		Foster 6496:15	gander 6268:5
FIGEL 6255:22	Fischel's 6394:24	foundation 6256:7 6266:15 6381:19	Gary 6256:18
file 6268:18	fits 6296:1 6311:5	FOX 6256:2	gather 6316:4
filed 6267:17,18,23,2 4 6268:19,22 6377:20 6398:25	five 6264:7 6266:5 6296:19 6298:17 6366:16 6398:14 6486:5	framing 6312:22	gauge 6380:20
filings 6502:5	five-hundredths 6366:20	frankly 6494:16	general 6316:8,10 6357:19 6377:14 6501:12
final 6332:25 6364:20 6380:1 6390:24 6493:1	five-year 6319:23	Frederick 6257:2,25 6260:11,20	generally 6326:7 6328:10 6359:11 6363:14 6369:10 6377:7 6398:21
financed 6264:9,10	fixed 6309:2 6335:13 6392:12 6393:7	free 6272:3	genres 6500:10,12
financial 6342:2 6367:24	flip 6363:2 6499:2 6501:21	freshman 6262:6	getting 6334:12,14 6341:18,19,23
financially 6543:10	Floor 6255:4	front 6378:14 6498:16	given 6309:17 6319:2 6325:9 6328:22 6343:5 6396:14 6397:4,24 6398:1 6486:4 6490:9
finding 6351:17	flunk 6323:18 6324:8	FTC 6345:22	gives 6385:19
fine 6269:14	flunks 6323:20 6324:12	full 6313:17 6316:22 6339:5 6369:17	giving 6326:8
finish 6351:4		fully 6305:20	

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015
Page 15

6334:7 6382:15 6390:13 6392:2 6395:3 6398:22 glean 6300:17 Glen 6257:11,17 6497:14 6498:1 G-L-E-N 6498:4 GLENN 6255:3 goal 6307:10 goodies 6356:13,14,15 goose 6268:5 Gotshal 6255:7 6490:7 government 6265:21 Governor 6262:20 Grand 6255:4 grant 6383:1 graph 6364:17 6365:1 great 6338:20 6387:7 6498:16 greater 6328:18 6495:7,8 green 6255:18 6365:5,6,15 Greenstein 6256:18 ground 6311:13 group 6264:22 6498:6,10 6499:23,24 groups 6500:7,10 grow 6364:2,22,25 grown 6500:2 growth 6393:16 6394:2 6395:23 6396:15 6397:18,19,20 guarantee	6335:14 guaranteeing 6341:25 Guard 6262:24 guess 6262:14 6384:17 guide 6498:11 GUMP 6255:10 <hr/> <div style="text-align: center;">H</div> <hr/> half 6390:17 halfway 6380:9 Hall 6256:20 6257:8 6375:18 6376:5,6,10,14,1 6 6379:3,20,22 6381:14,16 6383:21,22 6384:6,14,20,22 6389:18 6390:7,11 6391:15,23 6392:23,24,25 6399:19,21,22,2 3 6401:1 hand 6260:10 6266:25 6318:3 6322:22 6374:9 6388:22 handed 6259:14 6261:9 hands 6346:11 HANSEN 6255:21,22 6495:11 happen 6302:12 happened 6386:3 happy 6355:10 6371:15 6375:19,22 6392:10 6393:5 6396:12 6493:7 hard 6295:23 6301:24 6304:3	6315:12,14 6353:20 6354:15 6356:22 6362:1 6388:15 6397:21 harder 6304:25 Harvard 6255:17 6260:16 6264:6 HAUSER 6255:10 haven't 6303:6 6335:3 6349:20 6350:13 6353:9 6357:20 having 6273:1 6304:24 6305:2 6314:13 6326:16,25 6351:17 6360:11,12 6365:17 6502:17 head 6256:22 6330:10 6331:15 6360:4 Header 6378:22 heading 6322:1,3,6 headline 6295:18 6333:5 6353:21 hear 6329:22 6385:15 heard 6305:12 6307:3 6330:11 6389:9 6495:12 hearing 6254:16 6319:7 6347:10 6401:5 6503:8 held 6265:6 6385:14,24 help 6370:7 6384:16 helps 6323:1 hereby 6543:3 hereto 6543:9 hesitating 6314:17	6340:14 Hicks 6310:2 high 6263:2,9 6266:3 6309:4,8,16 6311:2 6336:19 6337:24 6367:9 higher 6330:24 6335:17,18 6342:13 6494:23 Highly 6304:23 hold 6300:14 6316:13 6325:5 holding 6298:22 6300:13 6368:1 homogenous 6263:6 honest 6398:22 Honor 6259:24 6266:10,13 6267:9,14 6269:12,23 6272:17,19 6274:11 6305:19 6306:2,13 6311:8,11,18,25 6312:2,7 6319:16 6322:2,4,7 6337:8 6365:13 6375:18 6391:8,15 6392:18 6399:15 6401:1 6486:3,21 6494:5,9,13 6495:15,21 6496:7 6499:7 6502:24 Honors 6337:12 6338:19 6363:1,17 6497:22 6502:3 hook 6270:18,21 hope 6497:4
---	--	---	--

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015
Page 16

hour 6486:4	iHeartMedia	6348:2 6351:17	6371:22
hours 6265:25	6255:21 6256:19	6352:10 6353:22	improper 6305:13
6266:5,8,9	6376:13,17,21	6355:5,6	6306:19 6307:4
H-O-U-R-Y	6377:22 6378:25	6357:7,19	inaccurate 6356:7
6496:23	6379:6 6394:7	6360:3,19	inappropriate
HUBER 6255:21	6395:15 6397:9	6362:3,17	6322:10 6326:25
hundred	6501:16	6364:24	6377:2,6,7
6301:18,19	6502:2,7	6365:16,17,21	6378:2,10
6316:5 6500:9	iHeartMedia's	6368:17,23	6391:14
hypothesize	6394:8 6395:16	6369:21 6372:24	inappropriately
6329:1 6346:18	iHeartMedia-	6374:1,3	6378:23 6379:5
hypothetical	Warner	6375:19,22	Inc 6255:6,21
6323:9,25	6377:11 6387:17	6378:13,21	incentive 6336:24
6324:20 6343:24	iHeart-Warner	6379:23	incentives 6340:8
6344:9 6386:3	6274:3,12	6381:11,20	6349:17
	6297:18 6298:3	6382:8 6384:6	incentivized
	6317:6 6318:19	6386:21	6265:9
	6339:22 6340:3	6392:8,13,14	include 6328:12
	6399:18	6393:2,8	6341:10 6375:1
I	IHM 6257:18	6396:12	6491:3
i.e 6336:19	III 6321:11	6486:13,20	included 6258:23
IBS 6257:24	6327:19	6492:13 6494:15	6490:24
6261:10 6262:8	6493:20,22	6495:13 6498:19	includes 6387:12
6265:1,2,6	I'll 6258:18 6274:4	6503:4	including
6266:15,18	6308:18 6322:17	imagine	6399:9,13
6267:1,4	6325:14 6340:19	6304:23,25	6400:10
6268:20,23	6353:25 6362:22	6328:1 6353:20	income 6368:15
6270:14 6271:2	illustrate 6357:2	6354:15	6370:1,3,10,12
6272:1	illustrated	impact 6303:10	6371:24
Id 6373:12	6400:10	6304:24 6305:2	incompatible
I'd 6348:21	illustrates 6399:14	6367:24	6342:6
6349:11 6355:10	I'm 6260:9	6369:13,22	incorrect 6390:22
6365:3 6371:15	6261:2,23	impeach 6391:12	increase 6342:15
6401:2 6501:1	6266:23 6267:23	imperfect 6487:3	6367:6
idea 6356:21	6268:1 6269:23	impinge 6319:16	incremental
6492:1	6300:19 6306:23	implications	6309:4
identification	6311:11 6313:19	6301:25 6393:23	indeed 6487:20
6258:8	6314:13,14,25	import 6300:6	6499:4
identify 6261:11	6316:6,20	importance	independent
6267:2 6271:13	6319:18 6329:3	6300:2,5	6351:7 6355:18
6364:16	6330:19,25	impression	6499:25
ignored 6371:5,7	6331:9,10	6258:13,14	independents
ignores 6305:15	6333:9 6335:3	improbably	6303:16,25
6307:6	6337:3,4		
iHeart 6295:14	6338:18 6340:14		
6303:7 6393:11	6345:13 6347:16		
6396:14 6400:18			

6304:1 indeterminate 6336:5 indicate 6340:19 6352:1 indicated 6263:25 6267:20 6373:15 6379:14 indicates 6329:18 indicating 6318:6 indie 6299:7 6500:24,25 6501:2 indies 6297:25 6299:11 6304:3,8 6351:14,16 6352:4,6 6356:6 6358:10 6501:3 individual 6400:23 6493:5 individually 6333:17 individuals 6489:15 industry 6304:13 6311:7 6343:8 6346:16 6359:2 Indy 6352:15 infer 6337:23 inference 6362:18 inferences 6296:21 6388:16 influence 6328:23 influenced 6325:8 6327:1 information 6267:19 6296:24 6297:1 6299:4 6300:17 6332:21 6401:2 6487:4,6 informative 6300:10,19,21	6317:7 6400:24 informing 6318:2 informs 6353:8 infringement 6382:19 6386:4 infringer 6382:18 initial 6313:14 6380:11 input 6308:21,23,24 6309:6,23 6310:15 6359:15 inputs 6308:25 6309:7 6491:15,21 inserted 6363:19 inside 6273:9 insofar 6343:20 instance 6271:16 institutions 6264:19 intellectual 6381:8,11 6382:4 intend 6269:22 intended 6351:19 intending 6300:5 interactive 6274:8 6297:13 6299:9 6301:3 6306:17 6307:13,19 6308:11 6309:15,18,25 6310:20,22,24 6312:22 6313:16,23 6316:2,17 6318:3 6321:1 6343:22 6344:14 6345:6 6355:17,20,25 6356:4,19 6389:10 6488:6,10,15	6489:21 6491:16,22 interactivity 6274:7 6305:10,15 6307:6 Intercollegiate 6255:17 6260:15 6261:13,22 6262:1 6263:1 interested 6262:8 6543:10 interests 6349:16 Internet-only 6381:1 interpret 6389:7 interpretation 6330:16 interrogatories 6267:24 interrupt 6503:4 intuitively 6310:6 6311:5 inverse 6489:4 inversely 6310:11 investments 6309:2 involve 6296:17 6341:17 involved 6543:7 involves 6296:17 isn't 6316:18 6320:3 6336:4 6350:16 6368:25 6369:8,13 6372:23 6492:7 issue 6297:8 6298:19 6308:4 6318:2 6326:5 6330:13 6331:15 6332:1,20 6360:7 6362:2 6383:10,13	6385:11,20 6394:25 6398:5 6400:24 6491:14 issues 6324:16 6400:25 item 6339:4 item-by-item 6339:11 itemized 6333:11 items 6330:1 6333:10,17,22 6334:8,10,12,19 6336:2 it's 6258:13 6261:12 6272:5 6299:2 6300:9,11,15,16, 25 6301:20,21,24 6302:11 6303:11,21 6304:3,14 6305:7,13 6306:23 6307:4,10 6308:16,17 6310:16 6311:4 6313:5 6315:12,14,16 6318:15 6320:10 6322:1,3 6326:6,25 6330:24 6332:21 6333:21,23 6334:9,14,22 6335:1,4,8,10 6336:5 6338:16 6340:18,23 6343:2 6344:17 6345:14 6348:3,13 6349:8,11 6353:15,20 6354:15,22 6356:22 6360:1 6362:1,12 6365:18 6366:2 6372:22
---	--	---	--

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015
Page 18

6375:20,23 6386:11,22 6387:1,5 6390:7 6391:21 6486:7 6494:2 6495:6,8,9 6496:16 IV 6254:9 I've 6299:18 6304:22 6329:11,22 6330:7,11,23 6331:11 6347:6 6353:7,12 6354:12 6356:14 6360:24 6381:10	6261:2,7 6263:24 6264:11 6266:20,21 6268:14 6269:3,18,21 6270:1,5,9,12,16 6272:14,22 6274:18 6297:4,17 6298:2,5,18,21 6299:10,13,25 6300:12 6301:5 6303:15,24 6304:12 6305:3 6306:22 6311:10,22 6312:3,9,15 6317:23 6319:13 6321:5,24 6322:5 6327:4 6332:23 6333:14,23 6335:24 6336:4,14 6337:5,13 6338:20,23 6347:23 6348:3 6361:3 6365:10 6366:23 6367:2 6370:20 6373:18 6374:5,25 6375:4,16,23 6376:4,7,12 6379:1 6383:20 6384:4 6387:8,14 6388:19 6389:17 6390:5 6391:19 6392:22 6401:4 6486:2,7,18,22 6494:6,10,18 6495:13,22,23,2 4,25 6496:1,2,18,21 6497:6,13 6498:14 6499:10 6502:10,12,17 6503:7	6265:19 6273:25 6295:10 6296:5 6316:2 6318:24 6320:25 6321:19 6322:10,18 6324:25 6326:18 6343:6 6352:22 6499:23 justification 6395:1,17 justified 6378:7 justify 6356:1 <hr/> K Kass 6257:2,25 6259:21 6260:11,20 6261:3 6263:25 6269:20 6270:4,16 6272:16 Katz 6492:15,17 KELLOGG 6255:21 key 6308:21,23,24 6309:6,22 Kilo 6261:5 kinds 6309:14 KNAUER 6256:8 knew 6295:20 Koehn 6496:16 K-O-E-H-N 6496:16,18,19 <hr/> L lab 6263:19,20 label 6340:7 6349:7,9,11 6352:16 6390:8 6493:11,24 6499:25 6500:1,7,10 labeled 6313:5 6314:2 6361:5	6378:19 6379:24 6391:25 labels 6338:13 6339:24 6343:3 6346:11 6348:23,24 6349:1,2,18 6350:1,7,16 6352:15 6355:18 6493:5 6500:14,24 6501:2 label's 6352:17 lack 6303:25 6320:19 6350:1 6356:15 6387:15 6487:6 laid 6266:15 language 6345:14 6380:9,17 6382:9,10 6385:17 large 6346:7 Larraondo- Klipper 6256:15 last 6261:3,15 6267:6 6295:25 6305:5 6306:5,8,13 6307:25 6311:13 6314:1 6315:2,9,11 6325:19 6337:21 6364:20 6372:3 6498:2 6499:2 late 6313:20 later 6364:9 6398:8 latter 6364:23 laws 6271:10,14,21 6272:6 lawyer 6272:10 lead 6302:8
<hr/> J JACOB 6255:10 James 6500:18 jazz 6500:1,11,12 Jennifer 6256:16 JESSE 6254:22 job 6498:9 jobs 6492:18 John 6256:20 joined 6267:15 joint 6267:5 6336:23 Jonathan 6256:16 Joseph 6255:14 6257:9 6305:19 6306:13 6311:11,23 6486:2,3,8,10,13 ,18,20,24 6487:1 6494:4 6496:17 Jr 6257:25 6260:11,20 judge 6254:20,21,22 6258:4,12 6259:3,7,10,16,2 0,22 6260:2,7	j 6261:2,7 6263:24 6264:11 6266:20,21 6268:14 6269:3,18,21 6270:1,5,9,12,16 6272:14,22 6274:18 6297:4,17 6298:2,5,18,21 6299:10,13,25 6300:12 6301:5 6303:15,24 6304:12 6305:3 6306:22 6311:10,22 6312:3,9,15 6317:23 6319:13 6321:5,24 6322:5 6327:4 6332:23 6333:14,23 6335:24 6336:4,14 6337:5,13 6338:20,23 6347:23 6348:3 6361:3 6365:10 6366:23 6367:2 6370:20 6373:18 6374:5,25 6375:4,16,23 6376:4,7,12 6379:1 6383:20 6384:4 6387:8,14 6388:19 6389:17 6390:5 6391:19 6392:22 6401:4 6486:2,7,18,22 6494:6,10,18 6495:13,22,23,2 4,25 6496:1,2,18,21 6497:6,13 6498:14 6499:10 6502:10,12,17 6503:7 judges 6254:19	6265:19 6273:25 6295:10 6296:5 6316:2 6318:24 6320:25 6321:19 6322:10,18 6324:25 6326:18 6343:6 6352:22 6499:23 justification 6395:1,17 justified 6378:7 justify 6356:1 <hr/> K Kass 6257:2,25 6259:21 6260:11,20 6261:3 6263:25 6269:20 6270:4,16 6272:16 Katz 6492:15,17 KELLOGG 6255:21 key 6308:21,23,24 6309:6,22 Kilo 6261:5 kinds 6309:14 KNAUER 6256:8 knew 6295:20 Koehn 6496:16 K-O-E-H-N 6496:16,18,19 <hr/> L lab 6263:19,20 label 6340:7 6349:7,9,11 6352:16 6390:8 6493:11,24 6499:25 6500:1,7,10 labeled 6313:5 6314:2 6361:5	6378:19 6379:24 6391:25 labels 6338:13 6339:24 6343:3 6346:11 6348:23,24 6349:1,2,18 6350:1,7,16 6352:15 6355:18 6493:5 6500:14,24 6501:2 label's 6352:17 lack 6303:25 6320:19 6350:1 6356:15 6387:15 6487:6 laid 6266:15 language 6345:14 6380:9,17 6382:9,10 6385:17 large 6346:7 Larraondo- Klipper 6256:15 last 6261:3,15 6267:6 6295:25 6305:5 6306:5,8,13 6307:25 6311:13 6314:1 6315:2,9,11 6325:19 6337:21 6364:20 6372:3 6498:2 6499:2 late 6313:20 later 6364:9 6398:8 latter 6364:23 laws 6271:10,14,21 6272:6 lawyer 6272:10 lead 6302:8

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015
Page 19

6487:7 leader 6500:11 leading 6495:11 leads 6331:5 learn 6265:9 learned 6311:6 6496:17 least 6296:25 6309:11 6345:19 6360:16 6378:4 6496:9 leave 6300:2,3 6344:12 6497:2 leaving 6299:25 6356:9 6386:5 legal 6346:25 6347:3 legendary 6500:17 Lehigh 6262:6 LeMoine 6256:16 6257:12 6497:18,21,23 6498:18 6499:7,13,15 6502:3,9,15,24,2 5 lend 6375:25 length 6303:11 6383:3 Lerner 6310:7,10,17,22 6311:1 6488:25 6489:6 Leslie 6256:20 less 6296:19 6300:18,20 6301:2 6316:22 6494:24 6495:3 let's 6273:24 6295:8 6298:17 6301:7 6305:5 6310:6 6312:3 6319:2 6322:14	6323:3 6324:18 6325:19 6348:15 6365:5,7,21 6375:24 6486:23 6487:2 6495:9 6497:6 level 6304:16 6359:14,16 6362:6 6487:15 leverage 6344:11 Lexton 6329:22 Lexton's 6330:6 Librarian 6379:14 Library 6254:3 license 6257:19 6295:12,15 6301:23 6302:3 6313:22 6319:21 6320:1,2,8,9,13, 14,18,22 6324:19,21,24 6325:2,8,11,16,2 1 6326:23 6327:23 6336:22 6339:22 6343:3,14,25 6354:19 6380:6 6382:5 6383:1 6389:6 6392:6 6489:13 licensed 6348:19 6386:19 licensee 6382:17,21 6383:2 licensees 6336:23 licenses 6319:23 6339:22 6340:12 6489:21,25 licensing 6382:14 licensor 6382:16 licensor/willing 6383:2 licensors 6336:23	Lichtman 6307:25 6378:23 6379:5 6395:10 light 6365:5 likelihood 6328:9 likely 6302:11 6303:22 6304:18 6309:5,16 6314:9 6349:17 6362:12 6367:20 6371:24 6394:7 6395:15 6397:1 6494:24 6495:3,7 likewise 6350:13 limited 6263:12 6306:4 6332:21 line 6337:12 6342:9 6354:1 6361:11 6363:19 6364:13 6365:15 6366:7,18 6390:12 6392:1 6393:1 lines 6305:20 6364:17 6365:1 6366:5 6378:6 listed 6314:6 listeners 6302:20 6364:9 6490:15 listenership 6362:14 6364:1,22,25 6367:18 6368:2,21 6369:5,23 listens 6265:17 literally 6263:16 6318:16 6394:12 little 6266:22 6301:24 6309:23 6319:3 6352:15 6353:20 6356:22 6360:20 6363:2 6365:17 6387:21	6397:21 6499:23 live 6269:16 LLP 6255:3,7,10,14 6256:2,8 lobbies 6271:24 lobbying 6264:22,23 6271:19,22 6272:8 lobbyist 6271:19 long 6304:21 6306:5 6382:8 longer 6320:2 6362:12 6368:16 Los 6255:4 lose 6368:13 loss 6364:1,22,25 6367:18 6368:2,20 6369:23,25 6370:1,13 lot 6258:15 6297:24 6306:7 6329:25 6353:7 6365:20 6392:15 6501:3,11 low 6367:9 lower 6302:9 6336:25 6361:20 6366:15,19 6374:18 6392:15 lump 6380:12 <hr/> M <hr/> main 6255:19 6310:15 major 6263:13 6265:7 6304:8 6305:1 6345:22,24 6346:1 6349:8,9,18 6352:14
--	--	---	---

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015
Page 20

6353:19,21 6354:16 majority 6263:4,25 majors 6296:18,23 6299:13,19 6303:25 6304:17 6343:20,24,25 6345:8,21 6346:13 6349:13,14,23 6350:6,16 6351:14,16 6352:4,5 6354:6,19 6355:19 6356:3 6358:10 6364:18 6371:20 6373:21,25 Malone 6255:18 6257:3 6259:18,19,21,2 3 6260:5,17 6261:8 6264:13 6266:13,21,23,2 4 6267:14 6268:15 6269:3,12,19,21, 23 6270:7,13 6494:7 managed 6502:15 management 6265:3 manager 6262:7 mandated 6346:22 MANGES 6255:7 manner 6340:20 6390:21 March 6265:8 marginal 6352:16 Marine 6262:23 Mario 6262:20 MARK 6255:22 marked 6261:10	6267:1 6498:23 6501:23 market 6297:7 6298:17,19 6299:14 6300:3 6304:15 6327:11,13,18 6329:2 6333:9 6336:19,25 6339:25 6341:10,13,14,1 9,20,21 6342:10 6343:5,24 6344:9 6346:21 6347:5 6355:17 6359:9,10 6375:6 marketplace 6323:9,25 6324:21 6362:5 Marks 6256:18 6363:21 markup 6310:10,13 6489:1,3,7 Marshall 6310:3 marshalled 6355:24 Martha 6256:15 MARTIN 6256:3 master 6501:9 material 6258:15 6319:14 6356:1 6398:6 materials 6388:13 6393:13 matter 6254:16 6307:4 6359:18 6396:9 6499:17 maximum 6368:20 may 6254:14 6271:18 6272:23 6273:8 6297:22 6304:8,9 6309:1	6314:14,21 6318:9,17 6328:12,17 6334:19 6340:25 6347:19 6348:1 6354:25 6355:4,7 6362:11 6381:14 6382:7 6386:20 6489:6 6496:4 6543:16 maybe 6273:10 6302:24 6318:16 6330:19 6344:18 6347:16,25 6396:8 McBride 6362:7 6363:21 McCartney 6500:18 mean 6265:13 6271:15,20,21 6300:1 6303:21 6304:10,24 6313:11 6330:19 6331:10 6332:6,8,21 6339:13 6340:11,23 6342:10 6348:22 6349:24 6350:9 6353:23 6357:10 6370:4,20 6374:11 6385:25 6394:13 6396:2 6488:21 6493:15 6495:16 meaning 6324:19 6328:8 6489:12 meaningful 6352:14 means 6271:23 6332:19 meant 6327:18 6490:21 measure 6386:2	measured 6368:2 measurement 6383:8 Media 6255:6 6256:7 meet 6376:18 meets 6326:4 6346:21 Melinda 6256:16 member 6264:25 6265:6,16 members 6263:7 6264:1 6265:5 6266:18,19 6271:2 6272:1 6348:18,23 6349:22 membership 6266:14 6271:6 memory 6357:13,18 6359:24 6363:10 6379:19 6396:3 mention 6387:14 mentioned 6374:6 6497:8 mere 6299:14 6300:15 Merlin 6296:16,18 6297:3 6298:8 6301:16 6319:8,20 6320:8 6321:18 6324:4 6325:7 6326:1,24 6327:12 6328:6,17,24 6329:3,9 6333:16 6334:12 6338:3,13 6347:11 6348:17,20,23 6349:4,7,22 6350:7,16 6353:18
---	---	--	---

6354:5,18 6361:14,22 6372:9 Merlin-Pandora 6317:6 6318:19 6323:5 6330:16 6331:7 6332:4 6340:3 6373:1 Merlin's 6330:1,2 6348:18,22 6349:16 met 6376:16 methodology 6380:4 Michael 6256:22 microphone 6266:22 6498:15 middle 6380:16 military 6260:24 6262:11,19 Militia 6262:22 millions 6368:14 mind 6338:21 6351:21 6392:14 mine 6260:3 minimize 6300:2,5 minimum 6314:2 6315:21,22,25 6316:9 6355:6 minus 6326:8,11 6367:9 minuses 6326:16 minute 6314:11 6353:3 6368:8 6497:3 minutes 6486:5 mirror 6295:19 6373:10 miscite 6347:20 misinterpreted 6372:15 misreading	6364:24 missed 6348:10 missing 6384:4 misspeak 6327:7 mixing 6308:1,2,3 model 6305:16 6307:7 6393:16,24 6394:6,13,15 6395:23 6396:4,15,25 6491:9,10 models 6306:17 6307:21 6308:3 6398:14 6399:13 6400:9 6490:18 6491:7 modest 6308:25 6491:17 modify 6340:21 moment 6300:1 money 6264:18,21,23 6271:18,24 6390:17 monopoly 6359:8,15 6374:9 6375:5 6487:11,14,21,2 4 monopsony 6359:5,13,22 6360:4,7,9,12,14 ,16,17 6361:13,16,17 6362:2 6374:9,13,16 6375:5,10,15 morning 6258:4 6259:19,20 6273:15,16 6274:1 6305:7 6312:12,13 6338:19 6488:7 6491:14	motion 6267:16 6377:20 6378:1 move 6311:12 6498:15 mover 6339:24 6340:10 6341:5 6343:4 movers 6341:7 moving 6338:18 multiple 6262:13 MUNGER 6255:3 music 6308:21,22,23 6309:7,22 6310:15 6359:23 6360:18 6491:16,23 6498:6,10 6499:23,24,25 6500:8,22 musical 6263:17 must-haves 6343:20 mutually 6487:8 myself 6296:11 <hr/> N <hr/> N.W 6255:15,23 6256:3,8 NAB 6256:21 6486:9,14 6493:4 6496:13,16 naked 6352:21 narrow 6353:5 narrower 6258:23 6353:15 National 6255:13 native 6257:23 6258:8 nature 6299:11 6311:7 6319:1 6341:9	Naval 6262:22 navy 6262:12,23 nearly 6345:9 6346:1 6349:12 necessarily 6264:8,9 6341:17,25 6342:6 6349:3 6377:7 necessary 6380:10 negative 6364:25 6365:1,2 neglected 6269:24 negotiate 6327:12 6328:8 6340:12 6493:6 negotiated 6295:21 6319:6 6336:20 6348:25 6349:3 6354:4 6355:19 6356:10 6493:12 6494:1 negotiating 6303:13 6374:23 negotiation 6303:8 6336:25 6382:4 6383:4 6386:3 6501:18 6503:2 negotiations 6295:25 6323:6 6328:12 6385:13,23 6389:3 neither 6317:7 6335:24 6394:25 6395:17 nervous 6297:2 net 6368:14 6370:3,10 6371:18 nevertheless 6338:10 6343:2 6351:10 6369:20
---	---	--	--

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015
Page 22

Newburgh 6260:23	notion 6359:8	6260:2,7	6268:6,10
newer 6501:4	notwithstanding 6370:16	6269:18 6314:16	opted 6298:11
Nice 6376:18	numerical 6335:4	6323:3,18,21	6493:5
Nichols 6499:13	6339:14 6350:9	6324:18 6326:22	optimistic 6391:1
nondisclosure 6274:20 6401:6	numerically 6313:11 6332:13	6327:21 6350:4	opting 6298:14
noneffective 6303:5	numerous 6271:17	6352:19 6358:23	option 6295:21
nonetheless 6325:6	<hr/> O <hr/>	6359:20 6361:10	6327:10 6348:24
nonGAAP 6370:3,10	oath 6272:23	6369:11 6377:13	options 6344:21
noninteractive 6301:4 6305:16	6273:18	6387:7	opts 6298:9,14
6307:7,14,20	object 6267:9	6390:10,15	order 6296:12
6308:11	6305:19 6337:8	6391:22 6396:12	6356:4,18
6309:15,19,25	objection 6270:9,11	6397:8,16,23	6361:17,20
6310:20,23,25	6391:8 6392:18	6492:25 6494:10	6380:1,19
6343:4,21,23	6397:12 6499:9	6496:18 6502:9	orders 6379:10
6389:4 6400:23	6502:6	6503:7	organization 6271:22,24
6488:7,11,20	obtained 6356:6	older 6501:9	6272:7
6490:1 6491:16	6381:24	OLSON 6255:3	organizations 6271:19
6492:5	obtaining 6341:10	on-demand 6490:23 6491:4	6272:1,6
noninteractives 6274:9	obvious 6495:17	ones 6335:2	original 6296:10
nontrivial 6367:20	obviously 6308:22	one's 6341:11	originally 6315:18,19
nonviable 6303:5	occasion 6265:21	one-year 6367:25	others 6301:14
noon 6375:20,23	occupies 6345:8	open 6274:15	6309:12 6332:7
nor 6349:21	occurred 6324:20	6312:6,8	6350:20
6350:4	occurs 6357:18	6486:21,23,25	otherwise 6327:16
normal 6492:18	offer 6268:1	6498:20	6351:6 6360:6
north 6260:24	6269:22,25	operate 6500:22	6487:7
Notary 6543:13	6339:23 6340:7	operation 6266:1	ought 6296:13
note 6267:19	6493:2 6499:8	operations 6498:13	outcome 6394:7
6375:20	offering 6493:24	opinion 6302:10	6395:15 6397:1
notes 6306:24	offerings 6302:25	6331:6 6332:15	output 6359:17
nothing 6260:13	officer 6261:24	6346:25 6347:3	outside 6274:20
6267:12 6273:2	offloaded 6260:8	6360:24 6378:8	Outstanding 6312:9
6395:20 6489:22	offsetting 6371:4	6382:16 6383:13	overall 6267:11
6497:15	oh 6270:5 6322:5	6385:10,19	6269:7 6498:11
Notice 6257:20	6337:7 6348:9	opinions 6384:2	6500:20
	6365:6 6486:20	opportunity 6268:18 6305:24	Overruled 6311:24 6337:13
	okay 6259:3	6306:9 6340:22	6391:20

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015
Page 23

oversee 6498:12	6367:21,25	6367:17	party 6334:25
overspins 6364:18	6368:13	6368:6,19,23	6335:25 6377:5
overstated	6369:7,14	6372:2,5	6496:11
6345:25	6370:18 6371:20	6380:8,17	party's 6387:16,24
OXENFORD	Pandora-Merlin	6383:23 6384:7	passage 6342:3
6256:7	6257:20	6385:18 6386:12	passed 6346:6
<hr/>	6274:5,14	6387:12	past 6306:18
<hr/>	6295:6,12	6395:5,9	6342:14 6500:2
<hr/>	6296:6 6298:6,7	6490:4,11,13	patent 6385:24
<hr/>	6317:16 6322:9	6492:19	6386:1
<hr/>	6325:12	paragraphs	patentee
P	6326:13,18	6354:25 6355:10	6382:17,25
P&L 6492:1	6328:21 6329:25	6368:11 6382:13	patience 6270:22
page 6261:15	6331:19 6332:24	6393:19	6311:12
6267:6	6333:10 6334:4	pardon 6351:3	Paul 6500:17,18
6321:16,22	6336:6 6338:1	6366:16 6496:3	pay 6271:19,24
6342:8 6354:1	6339:7	parenthetical	6272:1,7
6361:9 6378:19	Pandora's	6382:22 6392:9	6359:14 6374:17
6379:24 6380:3	6351:13 6352:3	Park 6255:11	6380:13
6382:11	6369:22	participate	6382:5,23
6383:20,21	6370:2,17	6264:25	6386:18 6388:17
6384:5,6	paper 6258:7	participating	6389:8 6390:16
6385:17 6387:12	6269:15 6322:23	6339:23	6392:5
6390:4,6,7,8	papers 6497:10	particular	paying 6264:18
6391:6,24	Papish 6259:25	6273:21 6295:17	6334:7,9
6395:2,13	6268:17	6296:16 6306:6	6392:10 6393:6
6397:15	paragraph	6310:12 6336:1	payment 6341:19
6499:2,3	6314:15,18	6388:11 6393:24	6371:6 6380:12
pages 6254:8,9	6315:6	6396:24 6398:5	payments 6267:22
6383:19 6397:20	6317:4,10,14	6489:5 6495:18	6371:5
paid 6262:3	6318:21 6319:10	particularly	pays 6370:18
6263:22 6264:21	6321:25 6322:16	6296:14	people 6265:22
6380:11 6392:6	6327:3,13	parties 6258:22	6389:7
pairs 6297:9	6336:17	6305:25 6312:17	per 6266:1
Pandora 6255:6	6337:4,16,18	6320:15,18	6380:23 6500:9
6256:18 6295:21	6340:1,24	6323:21 6324:15	percent 6264:4,5,7
6296:20,23	6343:12,16,19	6330:25 6333:24	6296:19 6298:17
6298:12 6301:15	6344:2 6346:18	6335:7,9,11	6301:18,20
6309:3 6312:10	6347:13,24	6336:21 6339:6	6316:5
6327:10,22	6349:16	6347:8,22	6357:8,14,15
6330:8 6333:16	6351:10,25	6348:16 6379:14	6358:9,15
6334:7 6338:4	6352:10	6387:25	6365:10,12
6344:13 6346:20	6353:1,9	6388:13,14,22,2	6366:20,25
6347:12	6354:23	3 6389:21	6367:9,10,11
6350:6,15	6355:5,15	6543:6,9	
6351:15 6352:5	6358:24 6362:15	partner 6363:20	
6354:4	6363:11,14		
6358:23,25	6364:4,6		
6359:22			
6360:7,17			
6361:13 6362:4			

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015
Page 24

6373:22,25 6380:24 6381:1 6495:2,4,5,9,10 percentage 6264:2 6271:5 6348:19 6367:6 6369:25 6370:13 6392:21 6393:3 6489:8 6494:23 perfect 6359:12 6487:6 perform 6360:18 6488:13,18 6489:19,23 6491:20 performance 6254:9 6335:16 6376:22 6377:2,10,16,23 6379:7 6380:23 6386:17,19 6387:18 6388:2,9,12,21 6389:14,21 6489:21,25 performances 6296:19 6372:7 6373:5 6380:12,20 performed 6354:3 6359:21 6380:19 performing 6369:11 6370:15 perhaps 6333:5 period 6296:1 6320:16 6346:5 6364:8 6367:25 6368:2,16,21 6390:16 6487:17 per-play 6299:22 6314:2,7 6315:5,21,23,25 6316:16 6331:13 6495:7,8 perspective 6330:1,9 6334:3	6346:1 6378:7 pertinent 6300:22 phase 6306:12 phrased 6340:20 physics 6263:20 picture 6318:14 pie 6374:21 piece 6374:22 places 6354:24 play 6297:14 6316:9 6355:6 player 6296:18 6349:12 players 6303:23 plays 6342:1 6370:17 6392:12,15 6393:8 please 6258:5 6260:9,19 6261:4,11 6264:24 6266:14 6267:3,14 6269:13 6274:20 6319:11 6320:25 6338:23 6355:2,3,15 6361:2,4 6376:4 6378:19 6381:14 6392:23 6396:6 6497:24 6499:14 6503:1,9 Pleasure 6486:17 PLLC 6255:22 plotted 6366:5 plus 6298:2 6334:15 6367:9 pocket 6273:10 point 6259:4 6260:25 6295:8 6298:10 6300:12 6301:13,20,21,2 2 6306:6,14	6316:4,8,10 6328:17 6329:5 6330:2,25 6340:16,17 6357:7,16 6364:16 6366:6,11,15 6375:1,2,7,9 6382:8 6388:7,8 6389:3 6392:13 6393:6,8 6395:25 6486:8 pointing 6358:15 points 6295:5 6301:11 6304:22 6315:7,10 6366:14 policy 6382:14 Pomerantz 6255:3 6257:7 6258:17 6259:6,9,13 6272:19 6273:4,14 6274:11 6295:2 6301:6 6305:4 6306:2,20,25 6307:1 6311:8,18,25 6313:1 6337:3,7 6347:25 6348:5 6349:6 6391:8,21 6392:18 6399:15 6491:15 6494:11,12,21 6495:15,19 6496:7,19,22,24 6497:7 pop 6500:15 Pope 6256:20 6257:12 6499:9 6502:6,11 portion 6274:13 6364:9,23 6384:23 6392:21 6502:18 position 6268:4	6299:21 6345:20 6359:1 6487:25 positions 6488:1 possessed 6350:15 possibilities 6335:18 possibility 6335:23 6344:22 6345:4 6487:9 6492:9 possible 6274:3 6335:10,11 6344:3,6,17 6358:9 6387:23 6496:25 post-deal 6386:16 potential 6321:13 6356:5 6360:7 6371:4 Potentially 6387:4 power 6299:14,18,20 6302:17 6303:4,17,20 6304:5 6345:9,21,25 6346:2,9,10 6347:9 6359:1,5,8,13,23 6360:4,7,9,12,13 ,14,16,17 6361:13,16,17,2 2 6362:2,4 6374:9,10,14,16, 18,20,21,24 6375:5,10,12,15 6487:11,14,21,2 4 practices 6265:3,4 pre-1972 6326:3 6372:8 6501:13 precedential 6327:16 precisely 6363:18 predate 6501:9
---	---	--	--

predominantly 6305:16 6307:7	6383:7,11 6400:24	Professor 6272:20,22 6273:15 6295:3 6297:5 6302:7 6303:15 6307:25 6310:8 6311:19 6312:12 6326:3 6331:21,24 6332:23 6339:2,3 6348:1 6351:12 6352:2,13 6359:21 6360:15,22 6362:8 6363:24 6371:1,14 6372:6,15 6373:2,19 6376:15 6377:21 6381:17 6389:19 6393:10,16,25 6394:6,24 6396:16,25 6397:18 6486:11 6487:2 6488:4 6492:15,17 6494:17 6496:2,3,15	promotional 6350:5 6351:15 6352:5 proper 6298:16 6306:15 6330:15 6331:7 6391:9 property 6381:8,11 6382:4 proposal 6267:5 6268:4,13 6314:7 6315:4 propose 6358:13 6496:10 proposed 6269:4 6297:11,21 6326:2 6496:13 proposition 6316:15 6367:23 6369:6 6371:19 provide 6260:1 6297:1 provided 6272:3 6313:1 providing 6497:12 provision 6301:8,12 provisionally 6257:19,21 6502:4 prudent 6382:21,25 public 6254:11 6258:2 6263:4 6264:1,3,5 6274:21 6295:1 6381:24 6401:8 6486:1 6503:10 6543:13 published 6269:5 publisher 6499:25 pull 6266:21 purchase 6361:19
prefer 6375:21 6389:9	principally 6348:18	problems 6267:21	
preferences 6490:15	printout 6382:12	proceeding 6267:12	
prefile 6502:5	prior 6337:25 6379:10,11 6381:11 6384:10 6396:10 6399:9 6493:18	proceedings 6379:11 6543:5,7,10	
presence 6302:5 6325:8,12 6500:12,13,14	private 6264:3,5,7	process 6491:25	
present 6256:14 6340:11 6370:19	pro 6390:18	produced 6374:4	
presentation 6400:14	probably 6311:15 6318:12 6354:24 6355:11 6491:1 6503:5	producing 6308:21	
presented 6352:21	problem 6264:17 6296:25 6389:5 6393:4	product 6310:12 6323:6 6325:21 6489:5	
president 6498:8,10	problems 6267:21	production 6267:25	
presumably 6390:25	proceeding 6267:12	professional 6331:5	
presume 6385:7	proceedings 6379:11 6543:5,7,10	professionals 6265:19,21	
presuming 6315:2	process 6491:25		
pretty 6270:21 6305:2 6362:17 6392:14	produced 6374:4		
previous 6381:6	producing 6308:21		
previously 6273:1 6366:13 6386:13 6497:8	product 6310:12 6323:6 6325:21 6489:5		
price 6310:10,19,23,2 4 6359:14,16 6361:20 6374:18,19,24 6487:14,16 6488:6 6489:3,8 6490:16	production 6267:25		
prices 6305:14 6307:5 6308:10	professional 6331:5		
price-takers 6299:11,15	professionals 6265:19,21		
primarily 6499:20 6500:1			
primary 6348:21			

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015
Page 26

6374:17	6298:22 6307:2	6327:11 6329:1	,21 6335:17
Pureplay	6316:11	6331:21 6336:18	6336:7,18
6295:19,22	6324:11,12,14	6339:24,25	6337:23 6340:13
6296:2 6319:9	6328:15 6335:6	6347:12 6349:16	6343:10 6354:16
6325:13	6340:14 6352:11	6351:11,18,19	6369:4 6373:4
6327:1,11,15,23,	6353:5,8	6355:16	6376:22 6379:16
24	6354:2,3	6364:1,7	6380:10,21,22
6328:3,8,14,19,2	6361:12	6368:14 6369:24	6383:9
3,25	6365:22,24	6378:22 6379:4	6385:11,12,21,2
6329:1,4,10,13,1	6366:12 6370:21	6380:9,18	2 6386:8
6,19,24	6372:1 6373:18	6382:16 6383:24	6392:16 6400:19
6330:17,22	6374:5 6382:2	6385:19	6495:7,9
6331:8 6333:6	6385:12 6386:7	6387:19,20	rates 6254:8
6334:5,6,16,20,2	6389:20	6394:6,25	6295:20,22
1 6336:7 6338:8	6390:15,21	6395:13	6297:11,14
6353:22 6354:16	6391:11,22	quoting	6299:23 6302:9
purport 6330:5	6392:2,4	6345:12,15	6308:10,24
6372:9	6398:19,20	6364:4	6313:16
purports	6400:1,2		6315:5,21,23,25
6311:14,15	6492:4,11		6316:9,16
6363:25	6494:16,22		6319:9
purpose 6325:15	6495:11		6327:1,11,15,19,
purposely 6298:21	questionable		23 6328:8,23,25
purposes 6296:7	6389:4		6329:1,2,4,9,10,
6315:3 6334:13	questioning		15,16,18,19,24
pursue 6368:15	6372:12		6330:17,22,24
puts 6299:20	questions 6267:10		6331:8,9,12,13,2
putting 6266:7	6269:20 6270:17		2 6335:21
6339:13 6384:3	6271:1 6272:15	raise 6260:10	6336:6,10,19
	6311:9 6333:2	6487:14	6337:1 6338:8
	6371:10 6372:4	raised 6273:23	6353:21,22
	6373:17 6376:11	6308:8 6353:8	6354:4,19
	6379:24 6387:10	range 6313:16	6355:6,20
	6390:13 6396:11	6321:8 6367:4	6356:5,10
Q	6494:5,8	ranges 6367:8	6370:17,21,22,2
qualification	6495:20	rank 6388:4	4 6371:21
6350:19	quibble 6345:19	rata 6390:18	6380:5 6381:8
qualifier 6328:11	quite 6303:20,21	rate 6267:5	6385:14,24
quality 6349:22	6309:16,18	6295:18	rather 6302:19
quantify 6356:17	6327:25 6334:23	6296:1,13	6314:21 6316:21
6488:14,19	6335:10 6338:16	6300:22 6313:23	6359:9 6375:24
6489:19,24	6344:17 6356:15	6314:3,7 6315:4	6377:23 6379:7
6491:21	6385:2 6500:2	6327:13	6391:21
quantitative	quote 6317:7,16	6328:3,14,19	ratio 6308:9
6489:22 6490:2	6318:20	6329:13 6330:22	6310:19 6491:14
quarter 6370:2,11	6319:21,22	6332:25	ratios 6488:6
quarterly 6370:3	6321:18 6323:24	6333:4,5,6	Re 6254:6
question 6297:4	6325:20 6326:25	6334:4,5,6,16,20	reach 6296:12

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015
Page 27

6297:10 6349:4 6382:20 6390:25 6487:7 reached 6320:11 6352:2 6357:3 reading 6331:7 6368:12 6391:13 readjustments 6372:21 real 6303:6 6308:4 6345:3 6487:3 really 6301:20 6303:4 6304:5 6331:22 6357:17 6374:20 reason 6302:14 6314:17 6318:11 6326:24 6333:14,15 6337:9 6341:4 6342:21 6348:21 6358:19,21 6395:19 6398:15 reasonable 6308:16,17 6318:15 6382:24 6384:12 6385:13,22 reasonably 6382:19 6384:2 reasons 6318:23 6319:4,6 6324:17 6333:21 6385:3 6389:8 6394:23 rebut 6304:17 rebuttal 6257:17 6268:18 6273:7,21 6306:7,11,15,19 6311:19 6317:5,10 6319:11 6321:16,22 6327:4,6 6337:9 6339:20	6343:13,19 6347:14 6348:3,6,8 6354:18 6358:25 6362:16,19 6363:6 6367:17 6372:3,6 6377:19 6378:17 6387:11 6393:12,17 6399:1,17,20,24 6492:20 6498:25 rebuttals 6305:24 REC 6257:2 recall 6271:11 6313:17 6314:20,22 6316:7 6317:1,8 6318:5 6320:6 6321:10,14 6330:4,10,14 6337:15 6342:17,18 6347:15,21 6357:22 6358:14,20 6359:25 6372:16,21 6373:12 6377:8,24 6378:5 6379:18 6382:1,9,15 6383:12,15 6385:9 6386:15,21 6390:12 6392:1,17 6393:15 6394:10,21,23 6396:20,23,24 6397:2 6398:3,4 recalled 6391:16 recalling 6320:4 6360:3 receive 6269:6 received 6390:18 recent 6340:20	6500:15 recess 6338:22 6376:2,3 recognition 6304:5 recognize 6322:21,25 6378:16 6379:25 6381:17 6384:23 6385:1,6 6389:25 6498:24 6501:25 recollection 6312:21 6317:2 6391:13,18 recollections 6357:20 recommendations 6316:1 recommended 6316:16 reconsider 6372:13 reconsideration 6372:19 record 6260:19 6261:3 6267:12 6268:8,13,21,24 6269:7,17 6301:17 6302:9,15 6304:12 6311:21 6315:24 6324:1,6 6325:22 6329:12 6339:10,24 6340:7,11,17 6341:5 6343:3 6346:11 6351:5 6358:5,7 6366:24 6368:12 6383:6 6384:9 6386:13,14 6391:10,14 6392:19 6486:25 6489:18	6493:8,11,24 6497:25 6543:4 recorded 6308:22 6309:7 6359:23 6360:18 6491:16,22 recording 6254:8 6386:19 6489:20,25 recordings 6254:9 6325:23 6326:4 6372:8 6500:4,9 6501:9,12,13 records 6304:10 6500:9 RED 6257:2 redirect 6349:6 6494:10,20 Redline 6257:23 reduced 6325:9 6328:22 6343:6 6371:24 refer 6273:8 6314:23 6386:12 6387:16 reference 6314:14 6369:15 6502:19 referenced 6387:10 referred 6271:9 6310:8 6314:18 6384:24 6488:25 referring 6368:5,17,18,24 6384:13 6399:21,24 6489:11,14 6491:8 6493:22 refers 6266:19 reflect 6358:8 6490:15,16 reflected 6328:14 reflects 6316:21
---	--	---	--

6341:20 6342:24 refresh 6313:20 6357:13,18 6358:6 6359:24 6363:10 6379:19 6391:12,17 refute 6316:15 regard 6297:19 6298:24 6327:9 6333:25 regarding 6373:24 regularly 6500:8 regulations 6267:16 REIN 6255:14 reinforced 6349:5 relate 6269:7 related 6258:20 6310:11 6498:13 6500:12 6543:6 relating 6295:6 relation 6350:15 relationship 6261:21 6262:18 6310:3,18 relative 6312:16 6349:21 6350:5,14 6351:13 6352:3 6501:3 6543:8 relatively 6307:17 6308:25 6309:24 6488:10 6491:17 release 6500:8 releases 6501:3,5 relevant 6300:18 6324:13 6379:16 6382:2 6385:8 6386:7 reliance 6377:1 6387:23 relied 6297:20 6316:17 6377:23	6394:8 6395:16,22 6396:5,16,17 6397:18 6398:9,13,17 relies 6393:17 rely 6321:2 6377:10 6378:10,24 6379:5 6384:2,15 6399:3 relying 6296:11 6384:18 6385:9 6387:15,25 6388:12 6397:22 remain 6272:23 6370:18 remaining 6381:1 remand 6321:12 remember 6312:18 6314:24 6330:12 6356:22 6358:22 6362:21 6370:4 6378:3 remembering 6357:7 remind 6273:17 6320:25 6386:21 remove 6304:7 renegotiate 6336:24 renegotiations 6337:22 repeatedly 6377:1 6393:17 repeating 6351:23 repertoire 6325:22 6346:20 repertoires 6371:21 repetition 6376:1 replacement	6259:4,15 replicated 6343:8 report 6313:14,15,18,2 0 6314:10 6319:5 6368:12 6381:18 6384:25 6393:12,17,20 6394:18 6395:2,5 6399:3,10 6400:5 reported 6367:18 6370:2 6371:21 reporter 6379:21 6486:25 6543:1 Reporting 6256:25 represent 6270:25 6322:18 6348:19 6357:15 6376:17 6397:11 representation 6345:24 representative 6296:7 represented 6300:4 6345:22 representing 6364:17 6486:14 reproduced 6363:18 request 6362:8 6496:25 requests 6267:25 requirement 6373:10 requirements 6325:24 reservations 6326:9 residence 6260:21 residential	6263:11 respect 6265:1 6268:23 6274:9 6301:16 6320:24 6343:22 6352:25 6355:25 6361:22 6377:11 6388:8 6492:4 respecting 6315:5 respective 6388:24 respond 6303:17 6305:8,24 6306:10 6308:14 6311:17 6353:13 response 6305:8,18 6307:9,10 6311:14 6344:3,17 6360:6 6488:1,5 responses 6274:6 6302:17 6344:6 responsibilities 6498:9 responsibility 6383:7 responsible 6311:23 responsive 6311:19,23 rest 6274:14 restate 6307:2 restated 6369:25 restricted 6268:25 6274:22 6319:14,17 6401:2,9 6503:5,11 result 6367:18 6392:11 6393:6 results 6307:21 retail 6309:14 retired
---	---	--	--

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015
Page 29

6262:12,17,21 retransmissions 6380:25 return 6389:19 returning 6395:1 revenue 6369:12,25 6370:1,13 6371:4 6392:21 6393:4 6494:24 6495:2,4,6 revenues 6307:24 6355:6 6369:23 6370:21 6492:7 review 6339:2 6397:5,24 reviewed 6258:22 6331:5 6379:10 6399:8 rewards 6265:10 Rich 6255:7 6257:8,13 6312:1,6,11 6319:15,19 6321:9 6322:3,8,22 6323:2 6327:5 6335:20 6336:15 6337:6,11,17 6338:18,25 6339:1 6348:2,7 6361:5,8 6363:1,12,17,23 6365:14 6367:3,13,15 6370:22,25 6373:15 6375:17 6490:9 6496:23 rights 6325:20 6359:23 6360:18 6500:21 risk 6311:12 6335:12,15 Roberts 6496:14 rock 6500:14,16	role 6501:18 room 6263:21 6401:5 6503:8 Rose 6256:16 roughly 6264:4 6265:20 6266:4 6299:22 6491:18 Rounder 6500:14 royalties 6310:18 royalty 6254:2,7,19 6308:10,24 6310:14,19 6311:1 6370:17,20,21,2 2,24 6371:5,23 6381:8 6382:23 6383:9,10 6384:12 6385:11,21 6488:6 Rubinfeld 6257:6 6272:20,23,25 6273:15 6295:3 6297:5 6311:20 6312:12 6313:2 6339:2 6348:1 6361:6 6363:24 6373:19 6376:15 6379:23 6389:19 6391:16 6393:10 6486:11 6487:2 6488:4 6494:18 6496:3,4 Rubinfeld's 6399:19 Rubinstein 6496:3 rule 6264:20 6502:14 run 6362:12 Rushing 6256:16 Russo 6256:25 6543:3 Rysman 6496:15,17	R-Y-S-M-A-N 6496:15 <hr/> S <hr/> sales 6301:18 sample 6296:21 satisfied 6324:16 sauce 6268:5 save 6495:19 savings 6371:4,23 saw 6299:23 scale 6367:7,8 scenario 6344:8 6394:2 scenarios 6395:12 scheme 6305:25 school 6263:2,9 6266:3 science 6263:17,19 scope 6266:11 score 6297:18 screen 6322:16 6363:8 sealed 6381:22,23 seated 6258:5 6272:24 6338:23 6376:4 second 6273:7 6301:22 6305:23 6308:7 6324:8 6341:7 6348:12 6383:23 6384:7 6385:17 6396:7 6492:21 secondly 6351:15 section 6321:18 6322:3,6 6380:4 6382:13 6383:18,24 6384:7 6387:11 secure 6341:6 seeing 6305:1	6337:4 6347:17 seek 6341:5 6502:4 seem 6494:23 seems 6333:8 seen 6303:6 6305:9 6330:21 6332:1 6336:1 6347:9 6396:18 6491:25 sell 6304:10 seller 6323:4,7,16 6348:14 6359:9 6381:7,13 6382:3,5 6386:8,9,18 6387:2,5 sellers 6324:1 6336:22 6347:13 sense 6297:5,20 6311:5 6340:18 6347:6 6353:5 6354:14 sentence 6337:21 6348:12 6351:4 6355:3 6356:12 6493:3 separate 6297:6 6298:7,9 6308:5 6350:24 6351:7 6374:4 separately 6274:22 6307:16 6320:23 6401:9 6503:11 sequence 6267:15 serious 6269:15 served 6262:16 service 6262:13 6302:21 6303:1 6306:17 6316:3,17 6324:6 6338:17 6391:2 6392:5 6489:13,15
---	--	--	--

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015
Page 30

6491:22	Shapiro 6302:7	6375:14	6295:4,9 6296:4
services 6274:8	6310:8 6326:3	similar 6309:18,25	6301:8 6305:7
6297:9 6298:24	6330:9,12,14	6344:13 6354:18	6499:14,16,17
6300:8 6305:17	6331:21 6335:3	6355:5,20	slides 6273:11
6307:8,14,16,19	6352:2 6359:21	6373:23 6488:10	6333:11
6308:2,6,11,12,2	6360:15,22	Simon 6500:18	slight 6363:8
2 6309:14,18,20	6371:1 6372:15	simple 6297:2	slightly 6308:18
6310:1,20,23	6373:2	6311:14 6380:18	sloping 6365:3
6312:22 6321:1	Shapiro's 6331:24	simplify 6310:5,6	slowly 6379:2
6324:1 6339:21	6339:3 6351:12	simply 6316:11	small 6274:13
6340:7,16,25	6352:13 6362:8	6328:14 6358:15	6326:5 6346:6
6343:4,21,22,23	6371:15 6372:7	6369:12 6370:16	6348:19
6346:9 6352:16	share 6297:7	6371:5 6378:10	smaller 6266:2
6355:17,21	6300:3 6339:25	simulcaster	6303:16,23
6356:1,4,19	6341:10,13,15,1	6493:11	6355:18
6488:7,11,15,20	9,20,21	simulcasting	smallest 6263:9
6489:21	6342:10,13	6490:23	so-called 6310:7
6490:1,14,18,23	6343:5 6355:6	singer 6500:16	sold 6325:21
6491:4,5,8,9,17	6495:3,4,5	single 6296:11	sole 6377:25
6492:5 6493:25	shares 6304:15	6364:16 6400:22	solely 6269:7
service's 6492:8	sharp 6319:22	6493:10,19,23	solve 6314:25
session 6254:11	short 6338:22	sir 6260:9 6316:25	somebody 6495:2
6258:2	6362:11 6376:3	6317:9 6321:21	somewhat
6274:21,22	6497:1	6322:21 6331:2	6299:24 6306:4
6295:1 6312:6,8	shortly 6497:12	6498:5 6499:3	6328:2 6335:17
6401:8,9	showed 6314:19	SiriusXM 6256:2	6345:25 6355:11
6486:1,19	showing 6268:12	sitting 6320:7	songs 6304:10
6503:6,10,11	6367:5	6360:1	6350:6
sets 6263:18	shutdown 6492:10	situated	songwriter
6313:21	sides 6299:18	6347:12,22	6500:16
setting 6296:13	6388:8,14	6348:13 6358:24	Sony 6366:18,24
6300:22	side's 6378:11	situation	sorry 6260:9
settle 6331:23	6388:7 6389:16	6268:16,17	6261:2 6266:23
settlement	Sierra 6261:5,6	6344:13,18	6267:23 6268:1
6268:22	signature 6261:16	6375:12	6269:23 6304:10
6269:4,8,11	6267:7 6499:3	six 6395:12	6311:11 6330:12
6296:2	signed 6274:19	6398:14 6496:8	6337:3 6348:2
several 6331:16	6338:14 6401:6	size 6296:21	6365:12 6374:1
6399:13	6503:8	6361:23 6501:2	6384:6 6486:20
shadow	significant	skill 6263:18	6493:22 6503:4
6295:11,14,18,2	6296:18 6299:23	skips 6326:3,6	sort 6358:16
4 6296:15,25	6309:1,3 6326:6	6372:7 6373:5	6384:1
6301:2 6319:7,8	6330:3	slide 6273:24	
6323:10,12	6349:7,11,12		
6325:2 6326:23			
6389:5			

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015
Page 31

sound 6254:9 6325:22 6372:8 6386:19 6489:20,25 SoundExchange 6255:2 6256:15 6257:16 6258:6 6264:18,22 6265:22 6267:5,17,23 6268:1,9 6269:4 6270:19,25 6272:20 6273:13 6377:20 6378:15 6389:24 6395:6 6494:20 6497:17 6498:22 6499:8,11 6502:20,22 sounds 6320:4 6342:18 6346:24 6387:22 6394:3 source 6315:4 sources 6302:20 south 6255:4 6260:23 space 6260:4 6344:14 6345:6,7 span 6364:3 6367:11 speak 6258:25 6265:20 6266:4 6486:16 specific 6319:6 6331:15 6335:4 6356:12 6372:21 6382:9 6396:23 6397:2 6491:24 6492:3 specifically 6330:18 6354:11 6385:9 6494:3 specifics 6330:11 6370:5 spell 6261:3	6498:2 spelled 6308:15 spins 6342:13,16 6348:20 6350:6,15 sports 6265:14 Spotify 6344:14 6345:8 spring 6266:7 stacking 6326:12 staff 6265:16 stakeholder's 6498:12 stand 6260:9 6269:16 6320:3 6326:17 6336:16 6337:2,18 standard 6381:7,13 6382:3 6386:8,24 6387:1,5 start 6274:16 6309:8 6312:14 6375:25 6487:2 started 6499:25 starting 6493:1 starts 6382:14 state 6260:18 6262:19,22,23 6263:3,13 6264:9,19,21 6271:10,14,16,1 8,23,25 6272:6 6317:5,15 6336:18 6349:15 6351:10 6355:16 6372:2 6395:13 6497:24 stated 6319:4 6332:25 6337:18 6345:20 6372:1 6394:23 statement 6261:9	6318:17 6342:17 6352:21,25 6355:13 6489:10 statements 6261:18 6492:1 states 6254:2 6263:5 6264:20 station 6262:8 6263:7,19 stations 6263:10,16 6264:14,18,25 6265:24 6266:2,3,4,17 status 6319:17 statute 6271:17 6326:22 6373:10 statutes 6271:17 statutory 6295:12,15 6301:23 6302:3,5 6319:23 6323:25 6324:5,19,21 6325:2,8,11,15 6326:23 6327:19 6336:18,22 6337:22 6340:13 6343:10,13,25 6373:4,10 6380:5 6386:24 6387:1 6389:6 6392:6 6493:25 steeper 6362:13 steer 6301:15 6346:20 6367:25 6371:20 steering 6301:8,12,18,24 6302:1,2,8 6303:7,10,13,18, 22 6304:14,24 6333:1 6341:14,17 6342:24 6343:18,22	6344:7 6350:14,20 6362:7 6364:10 6365:11,13 6366:3,25 6367:19 6369:3 6370:16 6371:21,23 6373:21,24 Steven 6397:5 stick 6303:8 6332:24 stipulation 6497:11 stop 6375:25 Storm 6262:14 strategic 6344:16 strategy 6498:11 STRAUSS 6255:10 streaming 6355:20 6493:25 Street 6255:15,19,23 6256:3,8 stress 6337:20 Strickler 6254:21 6297:4,17 6298:2,5,18,21 6299:10,13,25 6300:12 6301:5 6303:15,24 6304:12 6305:3 6312:15 6321:5 6332:23 6333:14,23 6335:24 6336:4,14 6337:5 6347:23 6348:3 6361:3 6365:10 6366:23 6367:2 6370:20 6373:18 6374:5,25 6375:4,16 6376:7,12
---	---	---	---

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015
Page 32

6383:20 6384:4 6387:8,14 6388:19 6389:17 6390:5 6494:18 6495:23,24 6496:18,21 strike 6311:13,24 6372:3 strong 6302:19 6318:17 6344:16 6500:11 structure 6380:21 student 6263:7,16 students 6263:15,22 6265:12 studied 6360:9 6493:14 6494:3 studies 6353:6,12 Sturm 6256:22 subject 6258:7 6305:23 6325:17 6397:11 6398:7 6499:17 6502:4 subjective 6387:16,24,25 submission 6377:19 6378:3,6,12 6396:22 submissions 6378:9 6396:20 submit 6497:10 submitted 6258:24 6259:2,4 6399:17 subscription 6305:11,14 6307:5,13 6308:2,10 6310:23,24 6491:9 subscriptions	6307:15 subset 6258:23 6499:21 substantial 6299:20 6301:3 6302:16 6309:13 6338:16 6346:15 6360:13 6487:16 6501:6 substantially 6300:10 6325:4 6349:17 6355:18 6487:15 6500:3 substitutability 6309:23 substitution 6309:6,9 substitutional 6350:5 succeeding 6321:18 success 6320:19 6350:1 6362:5 6391:1 successful 6304:18 6320:14 6335:16 suffer 6296:25 sufficient 6299:14 6395:1 sufficiently 6388:24 suggest 6362:10 suggested 6329:12 6331:12 suggests 6329:5 6330:21 Suite 6255:23 6256:9 sum 6333:18 6380:12 6389:12 summary 6295:5 6326:17 support 6268:13	6331:19 6358:12 6362:18 supported 6268:3 6305:11 supporting 6355:25 6362:22 supportive 6378:12 supports 6268:8 supposed 6259:1 supracompetitive 6487:16 sure 6274:2 6296:9 6314:12,25 6316:5,6 6331:1,9 6332:6 6335:3 6336:12 6342:7 6345:14 6351:24 6353:22 6362:3,17 6368:23 6374:3 6381:12 6382:8 6385:25 6386:21 6392:13,14,24 6393:8 6492:13 6499:24 Surely 6363:13 surplus 6374:22 surprise 6328:3 6330:19 sustain 6371:24 6487:15 Sustained 6266:20 Suzanne 6254:20 6256:22 sworn 6260:12 6273:1 6396:15 6398:16 6497:14 SX 6363:7 6490:10 6498:23 6501:23 6502:4 SX-192-435 6391:25	SX-192-579 6390:9 SX-29-10 6378:20 system 6260:16 6261:14,22 6262:2 6263:1 6326:14 <hr/> T <hr/> tab 6267:2 6295:9 6313:2 6361:3 6378:13 6389:23 6395:6 6397:9 6490:10 6492:21 6498:21 6501:21 table 6364:24 6493:2 tables 6371:2,15 tabs 6363:3 takers 6335:12 taking 6373:5 talk 6274:4 6354:11 6378:4 6492:17 talked 6309:22 6310:4 6368:19 6490:25 talking 6306:18 6308:21 6319:8 6330:13 6353:5,6 6355:5,7 6356:12,23 6357:6 6363:11 6396:21 6489:17 6494:18 taxpayer 6264:21 6271:18,24,25 Taylor 6500:18 technical 6308:18 6490:17,21,25 ten 6381:1 tend 6265:19 6365:1
--	---	--	---

tends 6364:1 6501:8	6270:2,4,23 6271:9 6272:5 6273:7,21 6296:10 6300:20 6305:12 6306:3,7,16,19 6307:3 6313:6 6314:15 6316:14,25 6317:5,8,11,15 6319:11 6321:11,17,23 6322:17 6327:2,6 6329:8,11,23 6330:6,7,11 6331:4,10,11 6336:16,17 6337:2,6,10 6339:4,9,21 6343:13,19 6344:5,24 6347:14 6348:1,4,8 6354:18 6356:23 6358:7,25 6360:2 6362:16,20 6363:7 6367:17 6371:3 6372:3,6,14 6373:24 6376:20,25 6377:15,19,21 6378:1,10,17 6383:10,11,25 6384:17,24 6386:6 6387:11 6388:20 6390:15 6391:10,14 6394:24 6395:20 6396:15,19,23 6397:2,5,14,25 6398:2,8,16,23 6399:1,4,9,13,17 ,20,21,25 6400:2,9,17 6489:16 6490:5 6492:20 6499:1,5,18	6502:19 tests 6321:12 6322:15,20 6326:13 text 6314:23 6322:16,20 textbook 6374:15 thank 6259:16 6260:3 6261:7 6264:11 6269:18,24 6270:13,22 6272:12,16,17 6274:18 6301:5 6305:3 6306:25 6311:10,25 6314:16 6319:16 6322:5 6325:16 6327:17 6336:14 6338:20,25 6339:19 6341:3 6342:22 6350:25 6351:9 6353:14,16 6363:16 6365:13 6367:2,14 6375:16,17 6376:12 6379:21 6381:4,15,25 6384:21 6389:17 6399:22 6486:3,8 6494:6,12 6495:15,22 6496:4,5 6497:7,13 6502:9,24 thanks 6365:20 6498:17 that's 6259:7 6260:7 6262:14 6269:13 6298:1 6300:3,12,13,19 6301:14 6303:21 6304:19,21,24 6306:20 6313:25 6314:9 6316:9,18,19	6322:18 6323:17 6325:17 6327:2,16 6328:10 6329:6 6332:13,14,18 6333:20 6335:10,23 6338:2 6339:18 6340:1,5 6341:16 6342:20 6343:17 6344:15 6345:10,11 6346:12 6347:13 6348:21 6352:9 6353:8 6357:10 6359:18 6361:25 6362:15 6365:20 6366:24 6367:12 6369:10,18 6372:23 6384:18 6395:18 6400:12,21 6495:11 theory 6359:13,18 thereof 6387:15 there's 6299:17 6300:25 6306:7 6309:5,9,12,23 6314:20 6326:5 6332:14 6345:13 6346:6,8,15 6382:21 they'll 6335:15 they're 6304:4 6308:1,3 6309:8 6319:3,6 6321:4 6336:12 6343:7 6365:8 they've 6258:22 third 6341:7 6370:2 6388:1 Thomas 6256:20 Thorne 6256:20 thousands 6338:13 threat
term 6302:13 6319:1,23 6320:24 6327:24 6339:5,24 6341:13 6347:6 6354:10 6359:4,7 6361:16 6367:20 6368:14 6369:24 6487:10 termed 6358:19 terms 6254:8 6257:21 6265:25 6266:8 6298:15 6308:25 6331:19 6340:25 6353:18,21 6367:5 6369:13 6491:17 test 6321:19 6322:10 6323:4,19,20,21 6324:8,12,13,19 6325:19,20 6326:19 6346:22 testified 6260:13 6273:3 6302:7 6305:13 6309:12 6311:20 6312:20 6379:10 6381:5,10 6383:14 6384:10 6385:4 6497:16 testify 6384:10 6398:8 6494:14 testifying 6330:15 6377:8 6382:1 6386:15 6391:16 testimony 6257:17,24 6261:12,13,19 6266:12,16,19 6267:13,24 6268:3,19,24 6269:1,16,22			

Capital Reporting Company
Day 23 In Re: Determination of Royalty Rates (Public) 02-28-2015
Page 34

6302:8,12,13,18 6303:5,6,12,18 6304:1,13,18 6375:1,6,9 threaten 6303:2 threatened 6346:20 threatening 6304:6 throughout 6347:10 Thursday 6254:14 thwarted 6343:25 title 6498:7 today 6273:20 6295:6 6306:3,8 6318:10 6319:5 6320:7 6344:5 6360:1 6395:21,25 6489:16 6497:5 6499:21 Today's 6393:16 6394:1 6396:15 6397:17 TODD 6255:21 TOLLES 6255:3 tomorrow 6494:15 top 6302:24 6304:7 6330:10 6331:15 6342:11 6360:4 6367:4 6395:12 topic 6274:12 6305:5 6306:24 6357:5,22 6374:6 6397:25 topics 6273:22,25 6352:2 total 6266:16 6271:6 6301:17 6348:20 6367:11 totally 6318:25	6334:25 tours 6262:13 toward 6380:16 Tower 6255:11 tradeoff 6377:16 traditional 6500:1 transaction 6258:9 6324:20 transactions 6333:24 6334:1 6356:3 transcript 6305:22 6361:2 6389:25 6390:5,7,8 6391:7,24 6543:4 transcription 6322:19 transmissions 6380:13,24 6381:2 treasurer 6261:25 treated 6320:22 treatment 6372:7 trial 6319:21 6320:2,9,13 6384:10,13 tried 6354:13 trouble 6314:13 6351:17 6365:17 troubled 6389:15 true 6261:19 6296:14 6304:19 6306:20 6320:3 6328:10 6329:6 6350:7,8,17 6355:22 6359:10,11 6369:10,13 6492:7 6499:5 6543:4 truth 6260:12,13	6273:2 6497:15 try 6307:11 6369:16 6373:9 6489:2 6492:12 6494:15 6497:4 trying 6263:18 6311:12 6339:16 6343:9 6361:25 6365:16 6382:20 6396:2 tuning 6266:8 turn 6295:4 6301:7 6313:2 6319:11 6325:17 6355:15 6361:9 6378:13,19 6382:11 6383:18 6385:16 6389:23 6390:4 6391:6,24 6395:5 6397:9,15 6490:4,11 6492:19 6495:17 turned 6370:11 turning 6326:22 6358:23 6380:3 twice 6310:24 6311:2 two-year 6319:21 6320:16,24 6321:8 tying 6337:11 type 6500:21 types 6263:7 6265:24 6266:16,17 6308:6 6500:21 typical 6386:1 typically 6272:3 6304:4 6321:8 <hr/> U <hr/> U.S 6260:24	ultimate 6324:13 ultimately 6302:3,4 UMG 6365:6 unable 6304:1 unchanged 6370:18 uncomfortable 6384:18 unconvinced 6351:11,20 6352:1,7,20 unconvincing 6331:22,25 6352:13 underlie 6492:8 undermine 6352:23 underspins 6364:18 understand 6267:11 6297:22 6298:18 6300:15 6303:9 6330:5 6333:2 6386:23 6388:19 6393:3 6400:8 6494:17 understanding 6272:6 6386:1 understates 6364:8 undertaken 6350:4,13 6372:18 undertook 6339:11 unfortunate 6318:6 uninformative 6317:16 6318:8 uninformed 6318:16 uniquely
---	---	---	---

6347:12,22 6348:13 6358:23 unitary 6380:10 UNITED 6254:2 Universal 6344:10,18 6346:19 Universal-EMI 6345:11,16 universities 6263:3,14 6265:7 university 6262:7 6264:6 6265:15 6272:4 6381:18 6382:14 unjust 6383:8 unless 6356:11 6364:24 6388:23 unlike 6371:1 unquote 6317:7,17 6318:20 6319:22,23 6321:19 6325:24 6327:2,11 6337:1 6349:18 6351:11 6355:21 6364:2,11 6368:15 6370:1 unreasonable 6308:13 6493:2 unrebutted 6269:15 unrelated 6269:9 unsuccessful 6328:7 unusual 6348:22 upon 6267:17 6380:23 6382:18 6394:8 6395:16,23 6396:17 6398:17 upstream	6489:11,19,24 urge 6318:24 usually 6489:7 <hr/> V <hr/> vacations 6266:6 Vaguely 6372:17 Val 6260:5 validity 6356:19 valuation 6358:10 value 6328:13,16,18 6330:3 6333:9,17,21,25 6334:8,10 6335:1,8,16 6339:16 6356:25 6357:2,8 6358:17 6373:1 6387:15 values 6334:8,12,14 6335:4,7 6336:1 6339:14 valuing 6334:19 variable 6309:1 6491:18,21 variation 6299:3,4,8,23 6300:25 variations 6300:1 6333:24 varies 6325:3 various 6258:19 6263:7 6329:12 6500:10 vary 6302:25 vast 6263:4,25 6500:4 verification 6397:12 verse 6271:15 version 6302:19	6322:23 6396:16 versus 6297:8 6300:7 6305:11 6350:7,16 6351:14,16 6381:19 6388:9 6495:6 via 6500:5 viable 6344:8 Vietnam 6262:13 view 6295:13 6298:11 6302:10 6309:17 6318:10 6327:21 6328:17 6329:5 6330:3,25 6340:16,17 6343:2,12 6345:13,23 6346:23 6348:18 6377:12,14 6378:11 6388:7,9 6389:3,13,16 6391:1 6392:5,13 6393:9 viewed 6320:12 views 6295:11 6296:6 6301:11 vis-à-vis 6349:22 volume 6254:8 6301:17 6313:2 voluntarily 6336:20 6382:20 volunteer 6261:24 6263:23 6265:16 volunteers 6262:3 6265:18 <hr/> W <hr/> wait 6274:20 6503:9 waiting 6270:22 walk 6295:10	6375:2 Warner 6341:18 6376:21 6377:22 6379:6 6390:18 6400:13,15 Warner's 6393:11 6398:24 6399:5,14 6400:10,19 Washington 6254:4,13 6255:15,24 6256:4,9 wasn't 6316:10 6331:2 6358:16,18 ways 6299:19 6500:3 web 6254:9 6321:11 6327:19 6379:13 6380:1 6493:18,20,22 Webcast 6271:3 Webcaster 6493:24 Webcasting 6271:6 6324:1,5 6359:1 6379:11 6380:5 week 6259:14 6266:5 6307:25 6364:13,19,20 6365:10 6366:15,16 weeks 6357:25 6358:2 6369:6 weigh 6259:11 weight 6319:3 6325:10 6328:22 6343:6 Weil 6255:7 6490:7 welcome 6264:12 we'll 6274:17
---	--	---	---

6302:24 6311:24 6318:23 6325:17 6350:21,23,25 6376:2 we're 6270:17 6273:22 6297:18 6302:20,22 6304:20 6308:20 6319:8 6329:21 6336:12 6337:8,9 6344:17,19 6354:11 6357:16 6363:11 6499:20 West 6260:25 Westergren 6497:10 we've 6304:21 6305:12 6307:3 6318:11 6336:1 6347:9 6363:7,18 6364:13 6501:23 whether 6296:6 6316:13 6320:20 6323:8 6324:12,14 6330:20 6331:3 6333:3 6336:5,12 6337:15 6340:15 6353:18 6354:4 6365:24 6366:10 6371:11 6383:25 6388:20 6394:21 6395:4 6396:3 6495:6 Whittle 6258:11 6259:14 6270:3 whole 6258:9 6260:13 6273:2 6493:8 6497:15 who's 6334:18 whose 6334:3 widespread 6337:22	Wilcox 6399:4,12,16 6400:8 Wilcox's 6399:9,24 WILEY 6255:14 WILKINSON 6256:8 WILLIAM 6255:18 willing 6323:4,7,15 6336:20,21,22 6361:19 6381:7,13 6382:3,23 6383:1 6385:2 6386:8,9,18 6387:1,2,5 willingness 6388:17 6389:7,8 win 6265:12 Windsor 6260:22 withdraw 6492:13 withhold 6344:1,12,20 6346:19 withholding 6344:2 witness 6259:23 6261:5 6264:4,12 6267:1 6268:2,24 6272:17,18,21 6297:12,24 6298:4,13,20 6299:1,12,16 6300:9,24 6301:9 6303:19 6304:2,19 6305:20 6313:4 6319:12,18 6321:7 6322:1,6,23,25	6333:13,19 6334:22 6336:3,8 6337:15 6363:9 6365:12 6367:1 6370:23 6374:2,13 6375:3,8 6384:8 6387:13 6388:6,25 6390:10 6391:11 6396:14,19 6397:2 6398:16 6495:16 6496:5,6 witnesses 6398:22 6494:13 6496:8,12,13 witness's 6363:6 women's 6265:15 Wonderful 6486:22 work 6332:7 6342:25 6353:7 6360:5 6385:7 6498:5 6500:16 working 6497:11 world 6304:20,21,25 6305:1 6308:20 6309:10 6487:3 6500:25 worse 6388:4,6 writing 6496:10 written 6257:17,24 6261:12,19 6267:24 6268:25 6269:22 6270:3 6273:21 6313:6 6314:15 6317:4,10 6319:10 6321:10,16,22 6322:17 6327:2,4,6	6329:8,23 6336:17 6337:5,6,7 6339:3,20 6343:13,19 6347:13 6358:25 6360:1,22 6362:15,19 6363:6 6367:17 6371:2 6372:3,5 6376:25 6377:19 6378:16 6387:11 6393:12 6396:20,21 6397:5,13 6398:25 6399:4 6400:17 6490:5 6492:20 6498:25 wrong 6258:14 6333:9 6347:16 6369:21 6488:8,25 wrote 6320:12 6337:25 <hr/> Y <hr/> Yahoo 6380:11,19 Yahoo's 6380:23 yet 6360:13 6382:23 yields 6380:22 York 6255:8,12 6260:22 6262:19,22 6265:8 6271:15,18 you'll 6321:10 6342:1 6357:13 6359:24 yourself 6313:20 6331:18 6358:7 you've 6305:9 6329:17 6331:5 6342:14 6352:21 6353:17 6363:2 6366:12
---	--	---	---

6374:6,7 6389:9 <hr/> <u>Z</u> zero 6366:2			
--	--	--	--